Public Utilities

FORTNIGHTLY

February 29, 1940

PUBLIC UTILITIES REPORTS, INC.
PUBLISHERS

THE STORY OF THE UTILITY BOSS WHO LIKED COFFEE!

Amos Watts, hot tempered president of the North-South Utility Company, was a coffee worshiper —8 or 10 cups was his daily minimum. And heaven help the cook if the coffee wasn't good. (Which happened all too often!)

Mrs. Watts got pretty tired of fireworks for breakfast nine mornings out of ten. Decided they'd have perfect coffee *all* the time, or know the reason why. She found the answer in a shiny new Silex Glass Coffee Maker. And peace reigned serene in the Watts household.

BUT THAT'S NOT THE WHOLE STORY!

Mr. Watts was pretty shrewd. When it came to increasing the load on the lines, Amos Watts' mind was a meter that never stopped turning.

"Good coffee 2 days running—what's happened in this house?" beamed the lord and master. "Bought a Silex," cooed his wife. Automatically Amos Watts' nimble mind began to function.

"Good coffee! That's going to help my business! Any one of those electric Silex models adds a bunch of KWHs to the load. We'll sell 'em the idea of *good* coffee—*electric coffee*—and add plenty of KWHs on the line.

Things sure started in the office that morning.

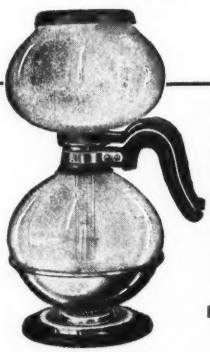
New displays blossomed in the Company's Main St. windows. They were filled with electric Silex Glass Coffee Makers—all the different models, using an average of 87 KWH each a year. Bill enclosures played up coffee... bill posters, newspaper advertisements—the promotion push of the Utility went smack behind *good* coffee—*electric coffee!* Local coffee firms got on the band wagon . . . grocers, too. The whole section got hipped on *good* coffee... and found out the only way to have it *every* time was to make it electrically in a Silex Glass Coffee Maker.

AND Boy—how the load reacted!

MORAL: *Push Silex Electric models. Women know them and like them—and your load is bound to go up.*

• • •

THE "DELRAY," Electric Silex, is but one of many popular models in the Electric Silex line. 8-cup size, black trim, $4.95. 10-cup size, $5.45. It's a good model to feature.



► What can we do to help you tie in Silex Glass Coffee Makers with *your* promotion plans? We have posters, billboard designs, suggested window displays, bill stuffers . . . plenty of good promotional material all keyed together to help you increase your load. Write us . . . *today.*

Pyrex Brand Glass Used Exclusively in Upper Bowl Handles.

Genuine SILEX GLASS COFFEE MAKER

TRADE MARK REGISTERED U S PAT OFF.

THE SILEX COMPANY . . . HARTFORD, CONNECTICUT

Creators of the Glass Coffee Maker Industry

Editor—HENRY C. SPURR
Associate Editors—ELLSWORTH NICHOLS, FRANCIS X. WELCH, NEIL H. DUFFY
Financial Editor—OWEN ELY

Public Utilities Fortnightly

VOLUME XXV *February 29, 1940* NUMBER 5

Contents of previous issues of PUBLIC UTILITIES FORTNIGHTLY *can be found by consulting the "Industrial Arts Index" in your library.*

Advertising Section

¶ *This magazine is an open forum for the free expression of opinion concerning public utility regulation and allied topics. It is supported by subscription and advertising revenue; it is not the mouthpiece of any group or faction; it is not under the editorial supervision of, nor does it bear the endorsement of, any organization or association. The editors do not assume responsibility for the opinions expressed by its contributors.*

PUBLIC UTILITIES REPORTS, INC., PUBLISHERS
Publication Office ..... CANDLER BUILDING, BALTIMORE, MD.
Executive, Editorial, and Advertising Offices ..... MUNSEY BUILDING, WASHINGTON, D. C.

PUBLIC UTILITIES FORTNIGHTLY, a magazine dealing with the problems of utility regulation and allied topics, including also decisions of the regulatory commissions and courts, preprinted from *Public Utilities Reports, New Series*, such Reports being supported in part by those conducting public utility service, manufacturers, bankers, accountants, and other users. Entered as second-class matter April 29, 1915, under the Act of March 3, 1879. Entered at the Post Office at Baltimore, Md., Dec. 31, 1936; copyrighted, 1940, by Public Utilities Reports, Inc. Printed in U. S. A.

PRICE, 75 CENTS A COPY ANNUAL SUBSCRIPTION, $15.00

Pages with the Editors

"THE time is not far off when the service area of any given public utility holding company won't cover any more ground than the state of Virginia."

IT was our old friend, the Washington newspaper correspondent, who was doing the talking. As usual, we didn't pay too much attention to him. This comes not from any lack of respect for our journalistic friend, but simply because his batting average as a prophet has never been much better than our own, which is to say pretty awful.

BUT the remark was another indication of the popular notion that the SEC is going to use the Holding Company Act to grind up the corporate holdings of the nation's public utility system into veritable hamburg. Now, all these things may come to pass. Nevertheless, we cannot help but observe that the holding company law has been on the books for nearly five years and § 11 has been in effect for nearly two years. And the completed integration plans promulgated thereunder, at this writing, could be counted on the fingers of one thumb. (The reference is to the American Water Works reorganization.) So, whatever may happen from now on, it is clear that the SEC campaign under the integration section of the holding company law has been anything but a *blitzkreig.*

YET, we understand that the SEC has already invited representatives of nine major holding company systems to discuss "show cause" orders to be issued against such systems. The advance gossip is to the effect that these "show cause" orders (which one great metropolitan newspaper referred to by, perhaps, prophetic error as "show-down" orders) are likely to include a bill of particulars specifying the precise holding companies which, in the opinion of the SEC, act as a bar to conformity with the integration provisions of the Holding Company Act.

SO it is apparent that the time is at hand when a number of major holding company systems will have to get into the SEC's reorganization hopper without more ado. But will these mills of the gods grind slowly? And will they grind exceedingly small?

THESE are the questions which we put up to EARL C. SANDMEYER, public utility reporter of the *New York Herald Tribune,* for the purpose of provoking an article. The result is MR. SANDMEYER's article on the integration situation which opens this issue.

H. T. DOBBINS

What went wrong with the Nebraska public power scheme?

(SEE PAGE 270)

BUT whether the holding companies are hung, drawn, or quartered (or cut into eighths, sixteenths, or smaller fractions), there seems to be no suggestion in the field of publicly owned power operations to follow out this process of making little ones out of big ones. Indeed, what suggestions there are in Washington these days seem to point in the other direction.

FOR example, Secretary of Interior Ickes (who doubtless finds time hanging heavily on his hands now that the last administrative reorganization has taken away a couple of his multitudinous duties) is reported to be itching to get control over all forms of Federal waterpower activities so as to "coördinate" them under a common administrative policy. Of course, the TVA could be depended upon to put up a battle that would do credit to little Finland before such an intrabureaucratic invasion could be consummated. But it goes to

show that the biggest holding company of all is thinking more along the burgeoning lines of "coördination" than along the suppressive lines of "integration."

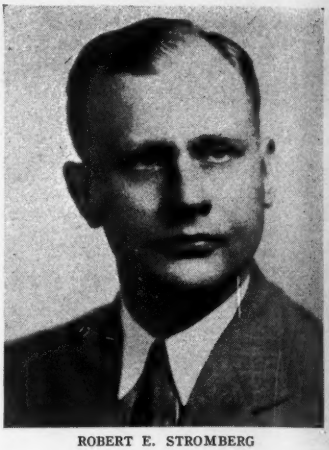
BE that as it may, there seems to be at least one public power project where this spirit to do bigger and better things is perhaps a little stronger than its financial underpinning. Such, at least, is the conclusion reached in the article on the Nebraska power projects by H. T. DOBBINS, associate editor of the *Nebraska State Journal*. (See page 270.) Under the original public power set-up, sponsored by the PWA, all Nebraska was to be divided into three parts—each with its own major power and irrigation district. Then came the great plan of creating a statewide power monopoly somewhat similar to the Ontario Hydro Electric Commission. This was to be accomplished by "coördinating" the three districts and buying out all the private power companies. What happened to this dream is the basis for MR. DOBBINS' article.

THE surest way for an industry to attract attention these days is to make a profit, especially if it is a substantial profit, consistently earned, and more especially if it continued through the depression. The radio broadcasting business seems to qualify on both counts and so we have an interesting discussion in this issue by ROBERT E. STROMBERG, a staff accountant of the Federal Communications Commission, which calls attention to the question of whether the government ought to control radio profits.

WITH all due respect to MR. STROMBERG'S reasonable discussion about the government's responsibility, we are somewhat troubled by the growing conviction in some quarters that there must be something inherently wrong about business profits whenever and wherever they appear to flourish. This conviction always seems to resolve itself into proposals either for profit regulation or special taxation, or both.

CONTROLLING industrial profits these days appears to be even shrewder government enterprise than public ownership itself. Messrs. Hitler and Mussolini found out some years ago that it was an improvement over old-fashioned socialism for a totalitarian government, by the device of ever-increasing industrial regulation, to exercise just about all the prerogatives of management without assuming the responsibility of ownership. As Confucius, or Henry Morgenthau, or somebody or other once said, "I care not who writes the nation's songs just as long as I have charge of the pocketbook."

YET there may be at least a humorous basis for suspicions (official or otherwise) about enterprises which have managed to flourish financially during the last few years, notwithstanding rising taxes and operating costs. It recalls the story of a hard-pressed little clothing retailer, who always referred to a certain competitor as a crook. One day someone asked how he was so sure his rival was a crook. "How do I know he's a crook?" he exploded. "Say, listen, my friend, anyone who has stayed in the cloak and suit business all through the depression and still shows a profit *has got to be a crook!*"



ROBERT E. STROMBERG

Competition may regulate radio rates but not necessarily radio profits.

(SEE PAGE 278)

AMONG the important decisions preprinted from *Public Utilities Reports* in the back of this number may be found the following cases:

THE Massachusetts Department of Public Utilities considers the various questions brought up before it by a petition by an intrastate railroad company for authority to abandon all stations and train stops and to discontinue all of its transportation operations and for approval of plan of reorganization under § 77b of the Bankruptcy Act. (See page 257.)

THE Pennsylvania Superior Court reviewed an order of the state commission requiring an electric company to modify its rate schedule and consider the various factors involved in determining a proper rate base. (See page 275.)

THE next number of this magazine will be out March 14th.

The Editors

In This Issue

In Feature Articles

In Financial News

In What Others Think

In The March of Events

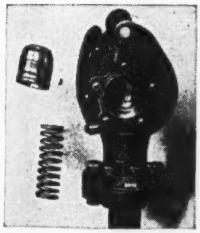
In The Latest Utility Rulings

PREPRINTS FROM PUBLIC UTILITIES REPORTS

Various regulatory rulings by courts and commissions reported in full text, pages 257–320, from 31 PUR(NS)

VULCAN VALVE HEAD, LG-1

e Vulcan Automatic Valve Operat- Head is an advanced development the high and ever increasing higher ssure and temperature conditions countered in modern steam plants. nplicity is the keynote in design and nstruction. A piston valve steam uated thru a pilot valve provides itive operation—makes Vulcan tomatic Heads the greatest step ad in Soot Blower Design in the t 15 years.



VULCAN VALVE ASSEMBLY

an Valves of completely corrosion stant materials and stainless steels designed for immediate accessi- y; they are so successfully de ed that of thousands in use no e of this type has ever failed in ice. Vulcan construction permits ptation to every increase in pres- for modern boilers—no valve stems reak—no opening or closing against m pressure—no regrinding of es is ever required—valve packing liminated. All Vulcan Heads are ipped with Vulcan pioneer Under Supports which have eliminated page of elements.

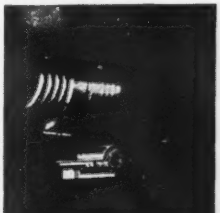
Lowest Cost? . . . NO! Highest Quality? emphatically YES!

VULCAN
SOOT BLOWERS

—are built with but one object—to provide industry with the highest quality equipment of this type it is possible to build. Every steam plant offers new problems in soot removal—Vulcan Engineers have successfully solved thousands of such problems. Vulcan installations are soundly designed, individually designed to do their work efficiently and economically—

to cut fuel costs and provide real savings in steam production.

From the desks of design and layout engineers to drafting room to factory craftsmen and to field service, Vulcan personnel takes pride in providing a personalized installation, built to exacting standards for long service and economical operation—backed by a record of lowest maintenance. *Ask the Vulcan Engineer representative why Vulcan must build to highest standards only.*



VULCAN VALVE DETAIL

ulcan Soot Blower Corporation • Dubois, Pa.

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

ROBERT M. HANES
President, American Bankers Association.

"No community is sound if it is overbanked."

COMPTON I. WHITE
U. S. Representative from Idaho.

"Reclamation has never been a partisan issue."

EDITORIAL STATEMENT
The Nation.

"Small investors are the cannon fodder of corporate finance."

CARTER FIELD
Special writer for McGraw-Hill publications.

"The day of making votes by attacking the utilities has passed, along with other sham battles."

FLOYD W. PARSONS
Editorial director, Gas Age.

"The gas utilities as a whole are stronger, larger, and better seasoned by having passed through the hot fires of adversity."

R. E. HOWE
President, Appalachian Coals, Inc.

". . . next to the importance of individual initiative and private enterprise in the building of America, is the natural resource, coal."

DAVID LAWRENCE
Editor, The United States News.

"If 1940 could make Senators into Senators and Representatives into Representatives, our system of government would be functioning anew."

EDITORIAL STATEMENT
The Washington (D. C.) Daily News.

"For the last ten years of taxing with one hand and spending with the other, Congress has been unable to coördinate its ambidextrous movements."

ROBERT S. HENRY
Association of American Railroads.

". . . advocates of government ownership and operation of American railroads do not look to experience. Instead, they offer a shimmering edifice of speculation, founded on the assumption of some special magic in the very name of government."

LEONARD P. AYRES
Vice President, Cleveland Trust Company.

"By a year from now we shall probably know fairly well whether in the future the flow of new funds that is required to keep our economy from stagnating is to come in the years ahead from government subsidies or from private investments."

WILLIAM S. KNUDSEN
President, General Motors Corporation.

"Recent legislation, projected or rejected, brings to the forefront more and more the idea that this world owes everybody a living regardless."

EDITORIAL STATEMENT
Industrial News Review.

"If states and municipalities lose such legitimate sources of income as the railroads, they will become paupers on the doorstep of a bureaucratic central government."

JOHN G. ALEXANDER
U. S. Representative from Minnesota.

"... we need less of the subsidized nostrums which dose the people of the United States and cut down their industrial enterprises in the commercial interest of competitors abroad."

JOHN C. PAGE
Commissioner, Bureau of Reclamation.

"Dams can be our forts, and canals our connecting network of trenches. Let the ramparts we watched symbolize the creation of civilization instead of serving as sentinels of doom."

HAROLD L. ICKES
U. S. Secretary of the Interior.

"I know that some of you honestly feel that any effort of the government to aid your [coal] industry—particularly through this [Guffey] Coal Act—is objectionable, and I respect your opinion, although I do not agree with it."

EMIL SCHRAM
Chairman, Reconstruction Finance Corporation.

"Much of the tonnage now moving on improved inland waterways could be expeditiously moved by rail at a lower cost if the shipper were required to pay, in addition to the direct cost, the so-called 'hidden cost' assumed by the government."

ELMER A. SMITH
General Attorney, Illinois Central System.

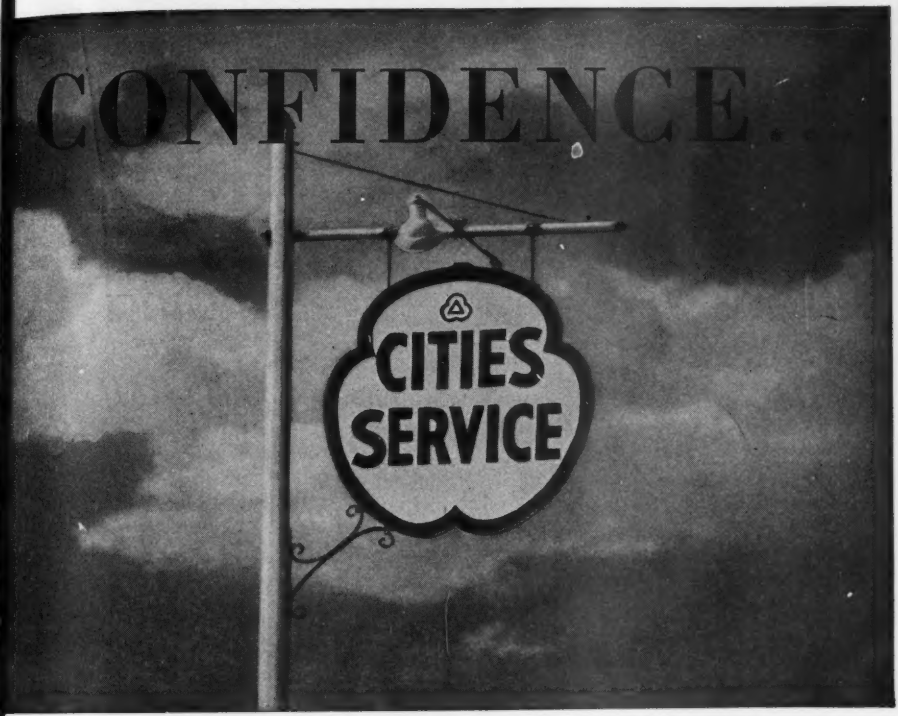
"If it be fair to expect the railroads to continue as self-supporting agencies of transportation, privately owned and operated, it must be fair to expect that when the taxpayers provide waterways for the shippers of this country, the shippers will pay a fair toll for the use of those waterways."

LISTER HILL
U. S. Senator from Alabama.

"I believe the Tennessee Valley Authority should insist that in every contract with every individual corporation manufacturing products necessary in time of war there shall be a provision in the contracts that all such plants served with government power shall be operated in time of war without profit."

GEORGE W. NORRIS
U. S. Senator from Nebraska.

"In my judgment, if when we started to deal with the unemployment problem we had devised a national plan of developing our natural streams for navigation, for flood control, and for power on a grand scale, we would have done more to bring benefit to the people and employment to the unemployed, than we have done in the slipshod way that we have gone about it."

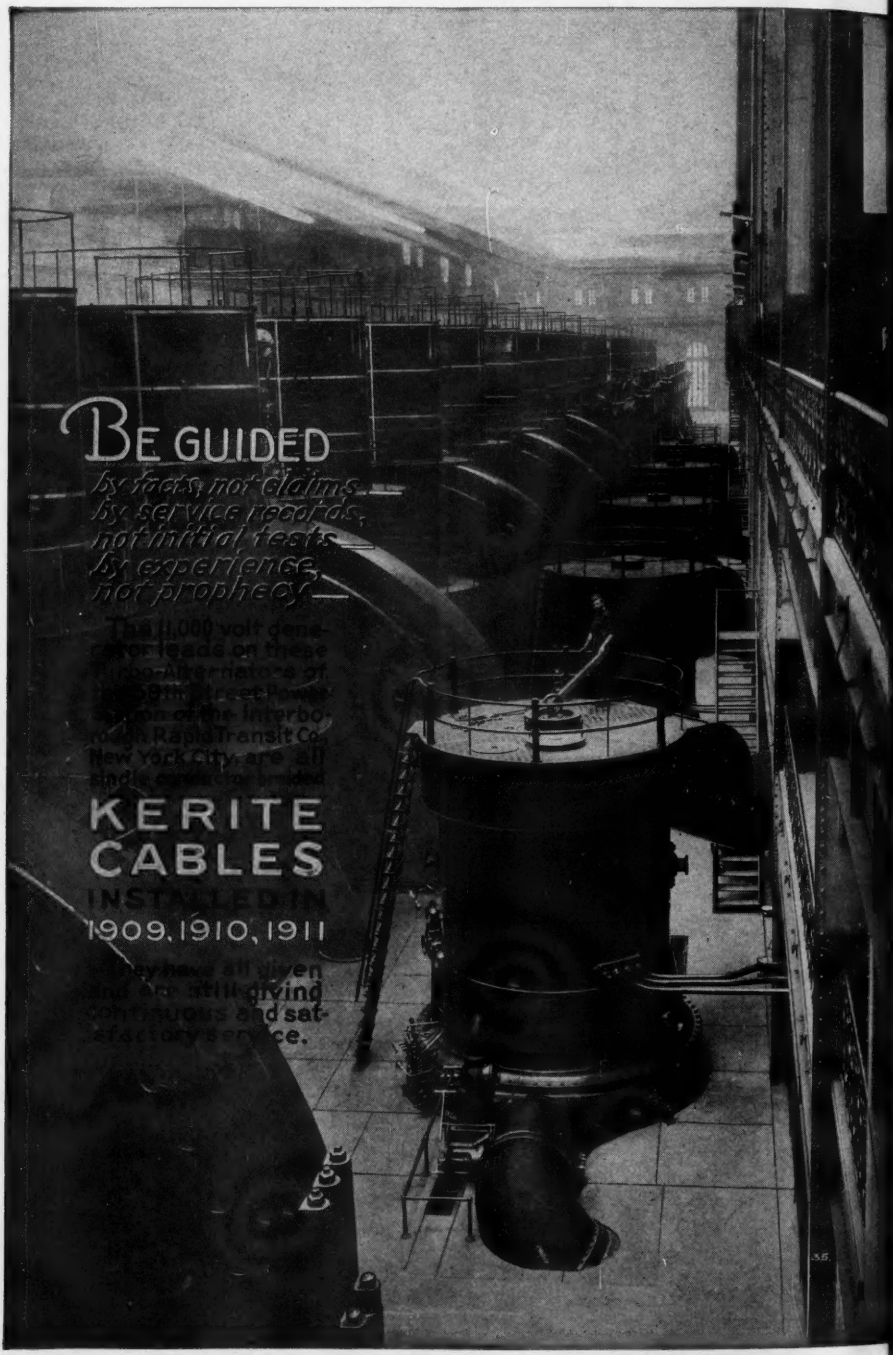


Whether You Buy A Tankful Of Gasolene Or A Carload Of Oil—You Can Be Sure Of The Quality Of CITIES SERVICE PRODUCTS

THE QUALITY of Cities Service gasolenes and oils is guarded every step of the way from the oil well to you. For Cities Service Oil Company is a completely integrated unit in the oil industry, engaged in all phases of petroleum operation . . . production, transportation and refining. The finished products, backed by years of refining experience, reach you through 16,000 reliable outlets. The Cities Service emblem is your guarantee of dependable products and efficient, courteous service.

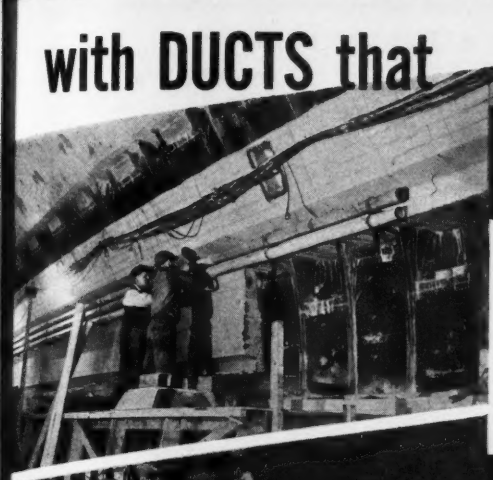
CITIES SERVICE 

Serves A Nation!



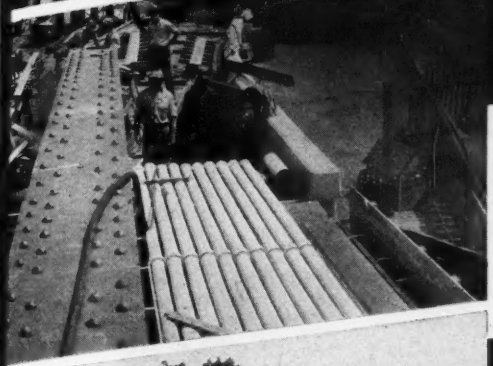
DISTRIBUTION COSTS LESS

with DUCTS that



CUT COPPER LOSSES

Cables run cooler through J-M Transite Ducts because their dense, close-grained structure has an unusually high rate of heat dissipation. Therefore, I^2R losses are reduced, and cables in systems using Transite Conduit and Korduct have appreciably higher carrying capacities.



DO NOT BURN

Made of asbestos and cement, Transite Ducts are fireproof. Flame and arc caused by cable burnouts will not damage adjacent cables and equipment. Being inorganic, these modern cableways prevent formation of combustible and explosive gases and fumes. Furthermore, they cannot rot or decay . . . keep maintenance low.

SAVE at INSTALLATION

Transite Ducts come in long, light lengths that are easily and economically handled. Lining-up is fast and accurate . . . fewer joints are required. Their smooth bore stays smooth—assures easy pulls on new installations or replacements. And, where Transite *Conduit* is used, it requires no concrete envelope.

● **YOU'LL SAVE by using Transite Korduct wherever cableways must be "concreted-in." On open and exposed locations, Transite Conduit is so durable it requires no protective casing. For full details, ask for brochure D.S. 410. Johns-Manville, 22 East 40th Street, New York, N. Y.**

Johns-Manville TRANSITE DUCTS

TRANSITE CONDUIT for use underground without concrete envelope and for exposed locations **TRANSITE KORDUCT** for installation in concrete

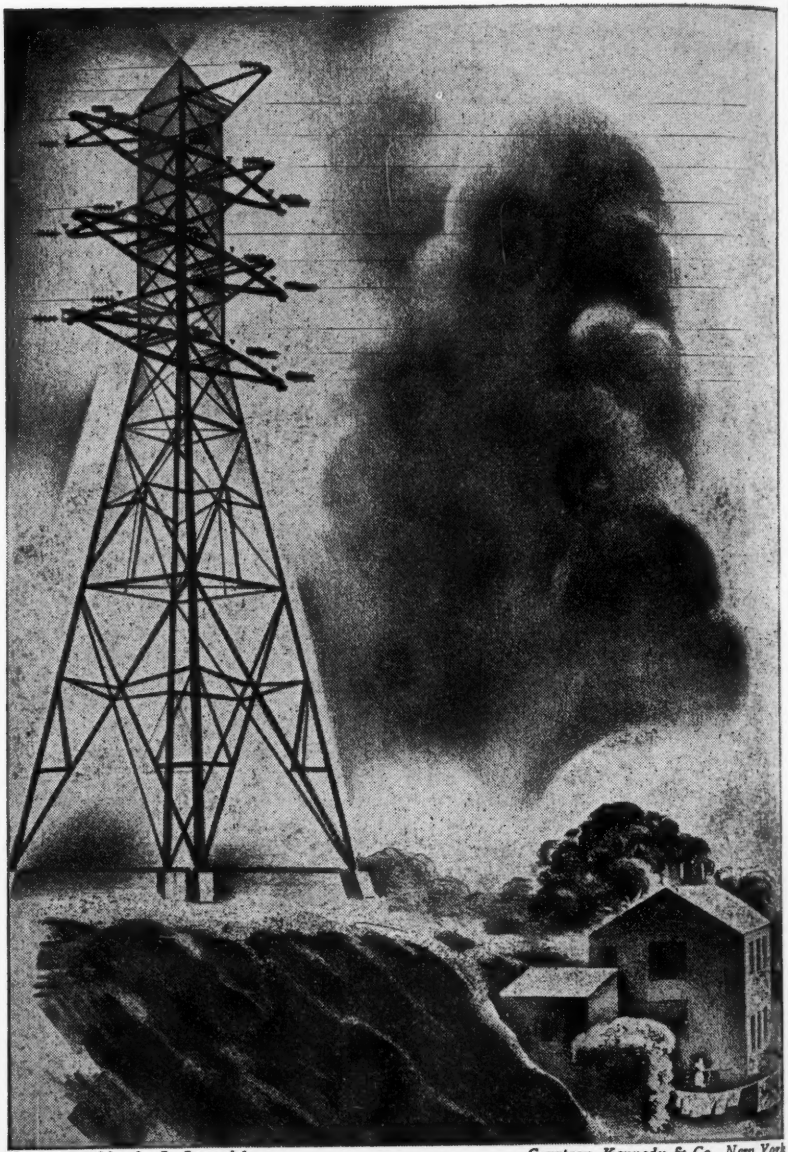
Utilities Almanack

FEBRUARY

29	Th	¶ *Eastern Natural Gas Regional Sales Conference opens, Pittsburgh, Pa., 1940.*

MARCH

1	F	¶ *New England Gas Association will hold annual convention, Boston, Mass., Mar. 14, 15, 1940.*
2	Sa	¶ *Western Public Works Congress will be held, Los Angeles, Calif., Mar. 14-16, 1940.*
3	S	¶ *Oklahoma Utilities Association will hold annual convention, Oklahoma City, Okla., Mar. 18, 19, 1940.*
4	M	¶ *American Society for Testing Materials convenes, Detroit, Mich., 1940.*
5	Tu	¶ *American Water Works Association, Southeastern Section, will hold meeting, Birmingham, Ala., Mar. 18-20, 1940.*
6	W	¶ *Missouri Valley Electric Association will hold joint rural sales conference, Kansas City, Mo., Mar. 19, 20, 1940.*
7	Th	¶ *Texas Telephone Association will hold convention, San Antonio, Tex., Mar. 19-21, 1940.*
8	F	¶ *Missouri Valley Electric Association will hold engineering conference, Kansas City, Mo., Mar. 21, 22, 1940.*
9	Sa	¶ *Oklahoma Telephone Association will convene for session, Tulsa, Okla., Mar. 27, 28, 1940.*
10	S	¶ *American Water Works Association, Canadian Section, will hold convention, Mar. 27-29, 1940.*
11	M	¶ *Wisconsin Utilities Association, Gas Section, starts convention, Milwaukee, Wis., 1940.*
12	Tu	¶ *Kansas Telephone Association will hold session, Topeka, Kan., Apr. 3, 4, 1940.*
13	W	¶ *Midwest Power Conference will be held, Chicago, Ill., Apr. 9, 10, 1940.*



From an etching by L. Lozowick *Courtesy, Kennedy & Co., New York*

Sentinel

Public Utilities
FORTNIGHTLY

VOL. XXV; NO. 5 FEBRUARY 29, 1940

That Integration Puzzler

The Holding Company Act period of grace thought to be nearing its end.

Realigning the industry should not, in the opinion of the author, be regarded as prolonged. In fact, the Securities and Exchange Commission, as administrator, may well deserve to be commended for proceeding cautiously with legislation so stringent in character.

BY EARL C. SANDMEYER

AFTER simmering for more than four years, the holding company solvent prescribed by Congress in 1935 is coming to a boil.

Until now the multicolored map of corporately related power systems has been little affected, but the fumes are becoming increasingly acrid as Washington prepares to apply the diluent directly.

In view of the magnitude of the task requiring geographical integration and corporate simplification of each electric system, perhaps the delay in realigning the industry should not be regarded as prolonged. In fact, the Securities and Exchange Commission, as administrator, may well deserve to be commended for proceeding cautiously with legislation so stringent in character.

Nevertheless, uncertainty of the outcome prevails—and, until this uncertainty is removed, the utilities' much needed return of investor confidence hangs in the balance.

EXCEPT through borrowing, the use of depreciation reserves, and the earmarking of net income which other-

wise might have been distributed to stockholders, companies engaged in the production and distribution of electric energy have found it difficult to finance necessary plant expansion and improvements in recent years. Virtually no new capital has been raised through the public sale of common stock or preferred stock, or even bonds, since 1931 (see accompanying chart).

Most of the electric utility financing since that year has been limited, by reason of public uncertainty, to the refunding of outstanding senior securities with lower interest-bearing certificates.

This financing predicament of the utilities is clearly reflected in the open market's appraisal of their equities. Although utility business has compared more favorably than other lines (consumption of electric energy in the United States has jumped 60 per cent since 1932 and the trend continues upward), utility equities have given a poor performance. On the average, utility common stocks are selling within their 1932 price range, and not far above their depression lows which were established in early 1935. From a 1929 high of 381.17, the average of thirty industrial common stocks fell 89 per cent to a 1932 low of 41.22. The average of fifteen utilities fell 90 per cent from a 1929 high of 144.61 to a 1935 low of 14.46. Percentagewise, the two averages lost almost equally; but whereas today the industrials have recovered 31 per cent of their depression loss, the utilities have regained only 8 per cent. Even the railroads, whose economic status has been far from satisfactory, have behaved better marketwise than the utilities.

IN explanation, it should be pointed out that while increased operating efficiencies have more than offset the downward trend of electric rates as an income factor, the threatened competition of Federal power projects, government subsidization of municipally owned plants, and heavy taxation have contributed to the depressed market for utility equities. Of equal, if not greater, influence upon investment psychology, however, has been the uncertainty of how each electric system will meet the specifications of § 11 of the Public Utility Holding Company Act.

Integration is no novelty to the utilities. Prior to the New Deal, power systems developed freely along physical and economic lines. With holding companies conveniently financing their purchases through the issuance of securities, acquisitions and mergers appeared in increasing volume from 1921 to 1929. Just as mushroom growth within the railroad and oil industries had invited corrective regulation, however, utility expansion was not to escape the abuses of human greed. The race for financial control led to bloated balance sheets, top-heavy capital structures, and watered equities.

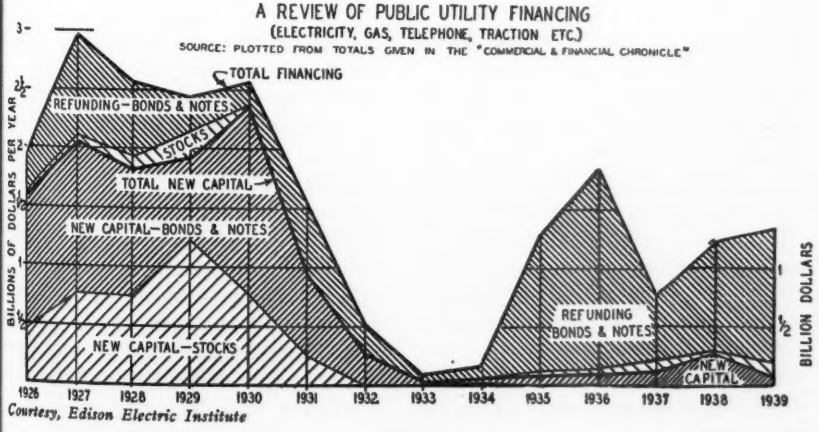
"Power trust" allegations inspired an exhaustive investigation of the electric industry by the Federal Trade Commission beginning in 1928. Adding fuel to the fire, came the market crash of 1929-1932 with paper losses of billions of dollars to investors. Subsequently, both party platforms called for a program of Federal regulation and the reformation was begun soon after the New Deal took office in 1933.

BEHIND waves of adverse utility publicity from the Federal Trade Commission, the sea roughened with agitation for government rate yardsticks and drastic holding company restrictions. The Tennessee Valley Authority was created in June, 1933, and Congress authorized huge power projects at other points. It was announced that the Federal government would contribute 30 per cent, later raised to 45 per cent, of the cost of construction and lend the balance at low interest rates to any municipality desiring to build its own power system.

Aware of an immediate need for an amicable understanding with government, utility men hastened to Washington in late 1934. It is needless to say that their efforts were futile, although not until after one of the bitterest contests in the history of Congress did the Public Utility Holding Company Act become law. Drafted by Benjamin V. Cohen and Thomas G. Corcoran, administration advisers, the legislation passed the Senate by one bare vote and, after two rejections, passed the lower chamber only when the late Joseph W. Byrnes of Tennessee, then Speaker, made an unprecedented appeal from the well of the House. Even then the so-called "death sentence" of § 11 had to be modified in language subject to broad interpretation. Authors Cohen and Corcoran, however, have kept close to the scene and are reliably reported to be actively collaborating with the SEC on enforcement of the Act.

BECAUSE of the administration's narrow margin of victory and because of political aims[1] behind the legislation, it is no wonder that the utilities tried vigorously to nullify the Holding Company Act in the courts. But why has integration remained at a standstill since passage of the Act in

[1] Commenting on the Holding Company Act, which he actively sponsored, Senator Burton K. Wheeler said: "For the private initiative of the holding company bent on a quest for private profit, this bill substitutes the public initiative of a Federal agency directed to the objective of public service."



Courtesy, Edison Electric Institute

1935? Why have so many utilities adopted a passive attitude toward the law when an early show-down might eliminate the public uncertainty which is largely responsible for depressed market conditions?

After all, the law is not to be ignored. By mandate of Congress, it is the duty of the Securities and Exchange Commission to enforce the Act "as soon as practicable after January 1, 1938." After allowing for the fact that the law was stymied in the courts until March, 1938, when the Supreme Court upheld the registration provisions of the statute, it would seem that the SEC is nearing the end of its grace period. That the commission realizes this was recently made clear in no uncertain terms by Chairman Jerome N. Frank who, in an address before the American Management Association in New York city on January 25, 1940, declared:

> And so it is that integration . . . is now just about to begin. It had been our hope that during this period of necessary administrative delay, the holding companies would avail themselves of those provisions of the statute which permit them to institute, before the SEC, integration programs of their own. One or two companies have done precisely that. But most of them have not.

UNDER § 11 (a), it is the duty of the SEC to

> examine the corporate structure of every registered holding company and subsidiary company thereof, the relationships among the companies in the holding company system . . . to determine the extent to which the corporate structure of such holding company system and the companies therein may be simplified, unnecessary complexities therein eliminated, voting power fairly and equitably distributed among the holders of securities thereof, and the properties and business thereof confined to those necessary or appropriate to the operations of an integrated public utility system.

The cynosure of the Act, however, is § 11 (b) wherein the SEC is explicitly directed to limit each utility group to a single integrated system; provided, however,

> that the commission shall permit a registered holding company to continue to control one or more additional integrated public utility systems if . . . it finds that—
>
> (A) Each of such additional systems cannot be operated as an independent system without the loss of substantial economies which can be secured by the retention of control by such holding company of such system;
>
> (B) All of such additional systems are located in one state, or in adjoining states, or in a contiguous foreign country; and
>
> (C) The continued combination of such systems under the control of such holding company is not so large (considering the state of the art and the area or region affected) so as to impair the advantages of localized management, efficient operation, or the effectiveness of regulation.

THESE subsections of the law give broad discretionary powers to the Securities and Exchange Commission. A branch of the executive department of the Federal government and appointed by the President, the SEC also has the authority "to make, issue, amend, and rescind such rules and regulations and such orders as it may deem necessary or appropriate" to carry out the Act. Thus, the commission may be regarded as a tripowered body, with executive, legislative, and judicial functions. The attitude of the commission toward the Holding Company Act, therefore, is important. What is this attitude?

Since the membership of the commission is subject to frequent change (there have been four chairmen in the last five years), and since the rules may be revised at the commission's will, the answer cannot be fixed. For the immediate future, however, the attitude of the present chairman as expressed in his recent New York address is significant.

Dormancy of Geographical Integration

"... geographical integration has been dormant since the Holding Company Act became law. This has been due somewhat to the reluctance of intrastate companies to become ensnared in Federal regulation by stringing their lines across state boundaries; due partly to a tendency of the various systems to wait and see what others are going to bid or offer in exchanging properties, but perhaps due largely to a lack of understanding with the SEC."

The integration provisions of the Act, said Mr. Frank, are "explicitly directed to the restoration of reasonably localized management. The purpose of that provision was precisely to restore vitality to the management of the local operating company."

The chairman said the SEC does not intend to "crack down" on holding companies, but he did *not* imply that the law is to be enforced by a commission with folded arms. "We will be carrying out the carefully planned congressional purpose of rejuvenating local utility management," he said. . . . "Ours is a long, tedious process which will take years. . . . While utility holding companies continue to control widely scattered local operating utility companies, it will most certainly be the duty of the SEC to review the judgment of management and restrain the hand of management where its proposals conflict with the explicit standards of the law . . ."

As if warning of a storm, Mr. Frank declared: "You will undoubtedly read in the press charges that we have begun a political campaign. When you read that sort of nonsense, don't believe it . . . We will not be applying a death sentence to the utility industry (the law makes a clear distinction between holding companies and public utility operating companies) . . . We will not be setting out to injure public investors in local operating companies. . . . There will be a lot of comment that we are setting out to destroy the investments of innocent investors. But we are not magicians . . . Nothing would so effectively accomplish the purpose of Congress as for the SEC to bring about a situation where local management—management that knew and had a sense of responsibility towards its particular community—would be in the driver's seat and the SEC would retire to the background."

Mr. Frank's attitude is shared by

other members of the commission. They may not be influenced by the fact that a presidential election is in the offing, but certainly they cannot afford to disregard recent demands of government ownership leaders that the SEC enforce the "death sentence" or resign.

"I believe the commission has waited long enough for holding companies to take the initiative," one high SEC official told the writer recently. "It is time the utilities stopped kidding us. They should either take definite steps to conform to the law or argue its constitutionality in the courts."

EXPRESSING the view that the utilities had eliminated many abuses of the past, this authority went on to show that further house cleaning was in order. "I know of instances in the power industry," he cited, "where secretaries are paid as much as $6,000 and stenographers as much as $3,000 annually. Even expert government clerks do not command such remuneration!"

It is quite obvious that the commission at last means business. Chairman Frank has promised "long days of hearings and many days of conferences." Also, "there will be time for the filing of briefs and time for oral arguments and time for careful deliberation on the part of the commission before any holding company system can be properly directed as to how it should integrate."

When the shortcomings are determined, it is the duty of the commission to order a holding company system to comply as the commission may see fit, but holding companies are not without safeguards against unjust rulings. Under § 10 (c) (2), the transfer of utility securities and assets is conditioned upon whether it "will serve the public interest by tending towards the economical and efficient development of an integrated public utility system." Under § 24 (a), "any person or party aggrieved by an order issued by the commission under this title may obtain a review of such order in the circuit court of appeals of the United States within any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the entry of such order, a written petition praying that the order of the commission be modified or set aside in whole or in part."

THERE are two phases of integration—one corporate; the other physical. Corporately, the Act aims to limit holding company systems to 3-story structures; *viz.*, § 11 (b) (2) ". . . the commission shall require each registered holding company to take such action as the commission shall find necessary in order that such holding company shall cease to be a holding company with respect to each of its subsidiary companies which itself has a subsidiary company which is a holding company."

The specifications of physical integration as applied to electric systems are not so clear. An integrated system is defined as being physically interconnected or capable of physical interconnections and, under normal conditions, capable of being economically operated as a single interconnected and coördi-

nated system confined in its operations to a single area or region. Further definition must come from the commission, since the single area or region is confined by the law to "one or more states, not so large as to impair (considering the state of the art and the area or region affected) the advantages of localized management, efficient operation, and the effectiveness of regulation."

It would be stretching the imagination to assume that the SEC aims to localize utility management on a scale corresponding to utility service in England. An exhaustive survey by the McGowan Committee on Electricity and Distribution in 1936 concluded that there were too many small electric enterprises in the country and that lower distribution costs could be achieved by widespread consolidations. The report has not been very effective, however, because of the large number of municipal plants in England.

It also would seem unlikely that the commission will go to an extreme in eliminating holding companies. Certainly there are many benefits under well-managed and properly regulated holding systems. Among these are the economies of combined purchasing; the combined use of expert services, such as legal, tax, and insurance counsel, accounting, financing, sales promotion, and rate research—to say nothing of engineering service.

As for integration, few utility leaders dispute economic advantages claimed by its advocates. In fact, much has been accomplished within most systems to eliminate duplicate operating expenses through corporate simplification. Savings also have been made through intrasystem tie-ins of generating and transmission facilities. Broadly speaking, however, geographical integration has been dormant since the Holding Company Act became law. This has been due somewhat to the reluctance of intrastate companies to become ensnared in Federal regulation by stringing their lines across state boundaries; due partly to a tendency of the various systems to wait and see what others are going to bid or offer in exchanging properties, but perhaps due largely to a lack of understanding with the SEC.

How can the deadlock be broken? How can uncertainty be removed and investor confidence be restored?

The SEC has had more than four years in which to study the Public Utility Holding Company Act and

¶ "THE *SEC has had more than four years in which to study the Public Utility Holding Company Act and survey the various systems affected thereby. It is a common remark of utility officials that, as for factual matters concerning their companies, the commission knows as much as they do. Not only is the SEC familiar with the law, but it knows the utility industry, having subjected all registered companies to a most thorough barrage of questioning on all phases of the power business.*"

survey the various systems affected thereby. It is a common remark of utility officials that, as for factual matters concerning their companies, the commission knows as much as they do. Not only is the SEC familiar with the law, but it knows the utility industry, having subjected all registered companies to a most thorough barrage of questioning on all phases of the power business.

In view of the circumstances, the utilities are asking these questions:

(1) Does the commission intend that each utility system be restricted to one geographically integrated unit, and, if so, how many such units may each holding company control?

(2) Is the "adjoining states" provision, § 11 (b) (1) (B), to be given broad or narrow interpretation?

(3) What is to be the proper size of an integrated system? Will it be determined by geographic or fiscal boundaries, by social or economic factors?

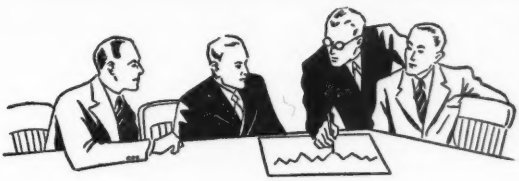
(4) Upon what formulae are properties to be valued for purposes of sale or exchange?

Now these are not just casual questions which might occur to someone reading over the Holding Company Act. They are mighty serious, fundamental points. Until they are settled, or the eventual solution of them is indicated (in at least a general way), no rapid progress is likely to be made in the integration program. And that goes for the SEC as well as the utilities. As long as these (and perhaps a number of other) basic matters remain up in the air, the integration policy is bound to wallow around like a ship bereft of maps or compass.

This suggests that a prophylactic rather than curative approach to the integration problem might be more effective. The situation recalls the unsatisfactory attitude that used to prevail in the antitrust division of the Justice Department. It was useless for a business man to hope for any advance help from Washington in determining the often difficult question of whether a proposed arrangement between business associates would or would not violate the antitrust laws. A Justice Department lawyer would listen coldly to the proposal, then fix the business man with a fishy eye and say, in effect:

"We can't tell you whether you are violating the law until after the violation has occurred. Go ahead at your own risk and after that we'll study the set-up and decide whether to prosecute or not. We're not here to give advisory opinions."

If recent reports are true, this state of affairs has cleared up considerably at the Justice Department and a business man can get at least a sympathetic, if not a conclusive, conference under such circumstances. But to get back to the SEC, the quickest way to break through this impasse which confronts the integration program would seem to be for the SEC to formulate some general guiding principles so that industry would know what to expect and prepare accordingly. And this would be helpful, even though the SEC resolves to pull the laboring oar itself without as much spontaneous coöperation from the industry as had been earlier hoped. At least, it would clear some of the fog of uncertainty which now makes utilities an investor's nightmare.



Definition of an Integrated System

"AN integrated system is defined as being physically interconnected or capable of physical interconnections and, under normal conditions, capable of being economically operated as a single interconnected and coördinated system confined in its operations to a single area or region."

It would give utility management some idea of direction. And the industry might be found more helpful to the SEC if it had some hint of the trail.

Of course, nobody can reasonably expect the SEC to come out boldly with a blueprint as to what would constitute an "integrated holding company" right down to the last dollar of allowable investment, or the exact limitation of size or scope of allowable holdings. Obviously, since each holding group developed in its own way, the integration process will necessarily have to be applied with respect to the special situation in each case. Nevertheless, there are certain inescapable common denominator points in this integration work which will have to be determined if the whole policy is not to be harassed with inconsistency and confusion. The four questions asked above appear to be of this order. It suggests a paraphrase of the oftquoted generality of Alfred de Musset: "Give us a Rule if only that we may identify the Exceptions."

WHAT is the SEC's reply? As expressed privately to the writer, members of the commission ask, "If utilities want clarification of these problems, why do they not bring definite programs before us?" Also, they ask, "If our opinions are considered unjust, do not the companies have full recourse to the courts?"

As has been publicly indicated by Chairman Frank, integration will be a long and tedious process if the SEC has to take the initiative throughout. Speed will depend largely upon coöperation of the industry.

The program of American Water Works & Electric Co. received its blessing sometime ago, and the plans of American Gas and Electric Co. and Columbia Gas & Electric Corp. have been heard by the commission. Through court reorganization proceedings the Utilities Power & Light system is being reshuffled to comply with the Act. Now that Associated Gas & Electric Co. has filed under the Chandler Act, its system will be given

due attention. (Some experts think this case will be in the courts for the next three years.)

The most interesting problem of integration—though probably not so serious as is generally believed—concerns Electric Bond and Share Co. This system's structure is simplified corporately, being limited to three stories with few minor exceptions. Geographically, however, operating properties are widely scattered. For example, note the regions in which units of more than one Bond and Share subholding company operate. American Power & Light Co. subsidiaries operate in Arizona, Florida, Idaho, Iowa, Kansas, Minnesota, Montana, Nebraska, New Mexico, Oregon, Texas, Washington, and Wisconsin. Electric Power & Light properties are situated in Arkansas, Colorado, Idaho, Louisiana, Mississippi, Oregon, Texas, Utah, and Wyoming. National Power & Light Co. subsidiaries operate in Alabama, North Carolina, Pennsylvania, and Texas.

OBVIOUSLY, it would appear that an interchange of subsidiary properties would be appropriate under the Holding Company Act for the Bond and Share system. Whether Electric Bond and Share Co. itself will be permitted to dominate the empire remains to be seen, but the management insists that both investors and consumers are better served through the principle of diversity. It was on this very principle, the management claims, that Bond and Share was founded.

The case of the Commonwealth & Southern Corp. is not complex. Some observers think the commission might see fit to bisect the system into independent units—one in the South and the other in the North. The northern division, with important properties in Michigan and Ohio, is in good position to expand. The SEC may think that Wendell Willkie has too much influence in the South, despite the sale of Tennessee Electric Power Co. to the TVA, municipalities, and others, but it is noteworthy that the C&S leads the industry both in volume and in economy of service per average residential customer throughout the system.

Standard Gas and Electric Co. system has interesting integration possibilities. Its San Diego property could easily be merged with Southern California Edison Co. The North American Co. might be permitted to accept Standard's 200,000 shares of Pacific Gas and Electric Co. as part payment for the properties of Wisconsin Electric Power Co. Other scattered properties might be sold by Standard to strengthen its stake in Minnesota and Wisconsin for its principal system; Pittsburgh and Oklahoma properties as additional systems.

UNITED Gas Improvement Co. undoubtedly would have little difficulty in obtaining SEC permission were it to sell its holdings of Connecticut Light and Power Co. to the public and use the proceeds to relieve United Corp. of its holdings in Public Service Corp. of New Jersey.

The North American Co., by selling its Wisconsin unit to Standard Gas and possibly by disposing of certain other properties, might increase its stake advantageously in the Middle West. Engineers Public Service Co. might liquidate utility investments

in the Northwest, Nebraska, Georgia, and Key West, using the proceeds to increase its equity in principal subsidiaries or possibly to acquire Virginia Public Service Co. from the Associated Gas System. Having placed its control of Cities Service Power & Light Co. in the hands of a trustee, Cities Service Co. apparently intends to retire from the electric business.

The process of geographical integration promises to command increasing attention. On the outcome hinges the return of investor confidence and the reopening of capital markets for an industry facing continued growth.

Interior Decorative Lighting Design—*a la carte*

A CERTAIN Federal official who makes a hobby of photography and amateur cinematography has hit on a system of interior lighting which, although hardly original, has all his friends talking about the novelty of the thing. He recently took over a large house in the Georgetown section of the national capital and his wife insisted that the old-fashioned, high-ceilinged basement which runs the full length of the house should be made over into a recreation room. But when he heard the good lady talking about getting an oil painter to do original mural panels to decorate the walls, he began to wonder if the expense of it all would not get out of hand.

So he decided to surface the walls with common aluminum-finished fabric board, which sells for only a few cents a square foot. Next he made, out of some metal boxes, several small "still" projecting lanterns just big enough to house a bright electric bulb—allowing for heat ventilation and reflectors. (Regular commercial spotlights might be used as well.) These were sunk into the ceiling and set at intervals sufficient for each lantern to "project" a lighted panel directly on the wall at such an angle as to avoid, as much as possible, any interruption of the light beams from passers-by. This was accomplished chiefly by starting the lower end of the "panels" halfway up the walls, leaving the bottom finished off with ordinary wall paper or decalcomanic decoration. Next, he arranged the lens frame of each lantern so as to carry a slide holding a "still" shot from his camera.

Result: The room is now decorated each night according to taste, with scenic effects that can be changed at will. At a recent birthday party for one of his children, the "panels" were each illuminated with color treated photographs of the birthday child taken at different times since babyhood. When the official was host to a patriotic club meeting, pictures of famous Presidents were projected. Little additional lighting is needed and the effect is so realistic that his guests sometimes insist on touching the "panels" to convince themselves that they are not really spotlighted paintings or permanent illustrations. The arrangement was thought to have even greater possibilities for large rooms with high ceilings and much wall space (such as a lobby or ballroom), where chandelier-type central projectors could emit several facets of beams simultaneously.

The Nebraska Power Projects

They still remain, in the opinion of the author, the problem child of the Public Works Administration; but the managers of the districts refuse to consider the situation hopeless.

By H. T. DOBBINS

THE three large public power projects in Nebraska in which the Federal government will eventually have invested in excess of $60,000,000 remain the problem child of the Public Works Administration, which supplied the money. Two of them are practically complete and the third is more than half finished.

The problem arises out of the fact that the two plants lack an adequate market for their production, and that with the completion of the third one a year hence the situation will become more acute for the reason that the investment in power equipment in two of the districts was originally justified on the theory that profits from sale of power would enable the owners of benefited lands to secure irrigation at a cost that they could afford to pay. If no profits, what then?

When these three projects were first given consideration it was with full knowledge that the existing market demands were being fully met by the private power companies and the numerous municipally owned plants, the former supplying 87 per cent and the latter 13 per cent of the 730,000,000 kilowatt hours annually sold.

UNDER the belief fostered by the teachings of Senator Norris and others that water power is inherently cheap power; that the private companies, because of overloaded capitalization, were being forced to charge what they regarded as excessive rates; and convinced that public ownership would act not only as a regulator of rates, but would result in so low a level of possible rates that the private companies would be willing to sell, the program was launched.

The Public Works Administration agreed to donate $20,000,000 to the enterprise, set up with the idea in mind

of a complete statewide public power grid in the course of time, and to loan the necessary additional millions at 4 per cent. The loans run thirty-three years and under an amortization plan that calls for yearly payments of 1.7 per cent of the loan in addition to interest.

THE original estimates were that the plants could be built for approximately $30,000,000, and it was figured that sales, even below the rated capacity of the plants, would provide more than enough net revenue to enable the districts to pay out. Roy Page, general manager and engineering expert for the Nebraska Power Company, which supplies 60 per cent of the consumption in the state, has said that had these plants been built within those estimates, there was a chance that the market could have absorbed their output and at a price that would have liquidated their loans. He said that the privately owned companies and municipal plants in the natural market area were willing to take the energy if it could be bought at a price not in excess of their own costs, and the price they could afford to pay indicated a possibility that the proposition would work out.

The stumbling block came in the fact that engineering and construction difficulties encountered, owing to soil conditions which resulted in difficult seepage and silt problems, forced a cost double the original estimates. Thus the Loup river project, estimated to cost $6,000,000, has cost more than $10,000,000 to date. Of this sum $3,216,000 was a direct grant. Platte valley, estimated to cost $5,000,000, has expended over $11,000,000 to date, of which $2,580,000 was a grant. Central Nebraska has an allotment of $31,000,000, of which $13,543,000 is a grant. Its original cost was estimated at $19,000,000, but plans were later enlarged. District officers estimate the final cost will be $36,000,000.

WHEN this disillusionment came and it was realized that the private companies could not be forced to retire from the competitive field, the districts set about their purchase. Working on a plan that called for the issuance of revenue bonds retireable out of the net revenues of these private plants, Guy C. Myers, a Wall Street broker, who is given credit for the suggested method, was employed to negotiate the purchases and market the bonds. Valuation engineers, including the late J. D. Ross, Seattle expert, were employed. They found that it would require $100,000,000 to take over all of them, the principal integers being the Nebraska Power of Omaha, Iowa-Nebraska Light and Power of Lincoln, Western Public Service of Scottsbluff, Central Power of Grand Island, Southern Nebraska of Superior, and Northwestern Public Service of Huron, S. D., which had plants at Columbus, headquarters of the Loup river district, and at North Platte.

Mr. Myers was successful in negotiating an agreement with Iowa-Nebraska, a subsidiary of United Light and Power, under the terms of which he was to pay $23,000,000 for their Nebraska properties. Officers of the company explained to the public at the time that they feared reprisals in other territories from an administration hostile to holding companies.

A Wall Street underwriting firm

undertook the placing of the bonds and had succeeded in tentative sales of almost the entire issue to eastern life insurance companies; but before the transactions were completed bills were introduced in the legislature of a type that frightened the prospective buyers into cancellation of their orders. Thereupon the underwriting firm withdrew from the picture. Particularly alarming was one legislative proposal that would have taken from the bondholders the existing right to have a part, along with the directors, in fixing rates to be charged.

THE Iowa-Nebraska Company, which had been given permission by the Federal Power Commission, announced that its properties would not again be offered for sale. The Nebraska Power Company repeated a former announcement that under no circumstances within its control would its properties be sold to the districts. Its officers said that if it ever became necessary to sell they would give preference to the city of Omaha—which consumes half of the state's production—and later signed a binding agreement to that effect, city officials being strongly opposed to district purchase.

After a bitter legislative battle, crammed with dramatic situations, the districts were able to defeat the more radical proposals which would have forced them to work out their financial salvation with the plants they now possess. Pressure from the municipalities owning plants resulted in the passage of measures designed to protect them from being swallowed by the big three, although district representatives insisted they had no such plans in mind.

These new laws make it possible for cities and villages in which private plants or distribution systems or both are located to take them over from the public power districts should they purchase them along with other plants. The laws require the district making such purchases to pay the same annual taxes to each political subdivision that the former owner paid; and also require districts making such purchases to possess franchises subject to the same control as that over the private companies, including rate regulation.

Discussion of one of these bills brought out the novel fact that if the districts purchased the properties of the Western Public Service Company, they would come into direct competition with the Federal government, their own financial backer, which is supplying current to cities and villages in the Service Company's area from dams built for irrigation. The law bars the districts from making plant purchases in the area thus supplied.

¶ "AFTER *a bitter legislative battle, crammed with dramatic situations, the* [*public power*] *districts were able to defeat the more radical proposals which would have forced them to work out their financial salvation with the plants they now possess. Pressure from the municipalities owning plants resulted in the passage of measures designed to protect them from being swallowed by the big three, although district representatives insisted they had no such plans in mind.*"

WITH the legislature adjourned, the districts renewed their purchase efforts, and announced, among other things, that unless the city of Omaha exercised its option to buy Nebraska Power by October 1st, they would renew their attempts to acquire it. The Reconstruction Finance Corporation was contacted, and it agreed to investigate the possibility of loaning enough to make all purchases; but the war came along and matters are at a standstill.

Despite the repeated declarations of Nebraska Power that it would not sell, the district directors have clung to the belief that enforcement of the Federal Holding Company Act would compel the parent company, American Light & Power, as well as the holding companies controlling other companies, to dispose of their properties, believing they cannot meet the requirements of the law for integration. This is denied.

BALKED at this point, the directors have entered into a contract with the Nebraska Power Company under which the latter agrees to purchase stated quantities on a sliding scale of prices. A similar contract is being negotiated with Iowa-Nebraska. Any savings are to be passed on to the consumer. The Northwestern Public Service Company, which operates a plant at Columbus, the headquarters of the Loup river district, has agreed to dispose of its properties to a local consumers' district on a lease-purchase contract. Guy C. Myers, Wall Street broker, has suggested that, instead, the district make an outright purchase of these properties at the agreed price of $1,209,000, and pay for it by issuing $1,300,000 of 4.25 per cent serial revenue bonds covering thirty years. The lease-purchase contract calls for 5 per cent interest on deferred payments.

A SHORT time ago Platte valley applied to RFC for a loan of $6,000,000, with which to finance the contemplated purchase of the North Platte division of the Northwestern Public Service Company; the Central Power Company of Grand Island, that portion of the Western Public Service Company of Scottsbluff not connected financially with the Federal reclamation service; the Gotherburg Light & Power Company; and the Nebraska Light & Power Company of McCook. Tri-County is also considering a similar application intended to cover purchases of isolated parts of the larger private companies in sections where the district has been asked to serve. R. O. Canaday, attorney for Tri-County, says that this is one way of solving the problem without duplication of facilities.

PLANS of the directors have generally contemplated sales of energy at wholesale. All plants are interconnected and a coördinator is to be named to operate them as a unit. If they had been able to complete their purchasing program, they planned to utilize their own production with the steam plants as stand-by equipment. Contracts have been made to serve a number of rural electrification districts and also several municipalities. The larger municipalities, which have efficient plants, have so far held off, apparently satisfied with their own production costs and skeptical of the ability of the districts to supply firm power. Central Power and Western Public

Credit of State Not Pledged

"In the event of financial failure, the Federal government would have to take over these public power developments. Authority for their formation was given by the Nebraska legislature in 1933. It is expressly set out in the law that the credit of the state was not pledged for the repayment of any construction loans made them, and that the districts shall have no power to tax property within their borders for their maintenance or operation. Sale to private interests is forbidden."

Service have bought some current and also sold some to the districts. Early in September the public power plants were purchasing 40 per cent of the energy they were selling, and were producing only 6,500 kilowatts against capacity for the two plants of 79,150 kilowatts.

The last annual reports of the two companies illustrate the financial difficulties under which they have been laboring because of lack of market and production difficulties. Platte valley in two years had a gross income of but $54,587, and at the end of that time showed an interest due item of over a million. Loup river started operations September 1, 1938. Its report for the four months of that year, filed only a few months ago, showed a gross income of $20,013, less than its administrative expenses, with $61,385 charged to operating expenses, in addition to $110,053 interest. Accrued and unpaid interest on December 31, 1938, was $329,577.

THE big question mark in Nebraska, as at Washington, is what chance have the big three to pay out? Power company engineers say that the investment per unit of electric power capacity is three to five times what it would be for equivalent steam or oil engine plants. They insist also that the three of them could not carry the present demand load if called upon to supply it because their actual capacity is much less.

This is disputed by the district engineers. In a report by the staff to the Central Nebraska directors some time ago, Loup river was credited with a generative capacity of 185,000,000 kilowatt hours per year, Sutherland with 194,000,000, and Central Ne-

braska with 353,000,000, a total of 732,000,000, which is about the same as the 1937 consumption, including 24,000,000 imported.

Professor Clarence E. McNeill, of the division of economics of the University of Nebraska, recently published the results of a year's study of power development in the state. On the question of productive capacity he says that the Loup river flow is not sufficient, basing this on past records, to enable the project located on it to operate on the flow allocated to it, and that since a full diversion would be necessary to operate the power plants at capacity, it is obvious that the plants will operate at from one-third to one-half capacity during a large part of each year.

WATERS of the Platte river on which the other two developments are located are overappropriated, and rationing among irrigation districts has been frequent in recent years owing to lessened snowfall in the mountains and to the acts of irrigators in Colorado, where the South Platte has its source, and of irrigators in Wyoming, where the North Platte originates, in disregarding prior appropriations in Nebraska. The attorney general has been battling in the Federal courts for five years in an effort, vain so far, to compel the release of periodically impounded waters.

Platte valley has the right to the normal flow of the river for filling its reservoir, but Central Nebraska has title only to flood waters. The building of irrigation-power dams near the Wyoming-Nebraska border by the Federal government has lessened the supply farther east, and it was necessary for riparian landowners to go into court to establish prior rights to the subterranean flow which they showed had greatly dwindled production on their farms.

On the other hand, engineers for the two public power districts say that a study made by them shows that over a period of more than forty-three years there were only two instances where the reservoir storage provided for in their plans was not sufficient to supplement river flow to the extent that full operating capacity could not be utilized 100 per cent of the time. Platte valley, however, was forced in July practically to cease operations and release to irrigators nearly all of its stored water. It began first in 1937, during which it sold 5,000,000 kilowatt hours, but operation was halted for a year because of the break of a siphon which carries water from the reservoir under the South Platte river to irrigated areas. It has also had troubles with its canals. Because of lack of fall in the Platte river valley it was necessary to build canals from 35 to 70 miles long, and, because of the nature of the soil, maintenance is high, seepage and erosion appearing.

THESE two power-irrigation plants are distant from the consuming market in eastern Nebraska, and expensive transmission lines had to be built in order to assure interconnection and firm power production, and these run through open country where storms are not infrequent, forecasting high maintenance costs.

The only published calculation bearing on the question of the financial outcome of this experiment, designed to produce in Nebraska a little TVA, that

is at all favorable to the claims of the districts is that included by Professor McNeill in his study. He says that if one-fourth of the costs of financing and operation is allocated to irrigation, the districts, if supreme in the field of sales, would be able to sell current at 3.35 mills per kilowatt hour, or a mill less than the generating costs on all energy now sold in eastern Nebraska. His calculation, however, does not include any allowance for depreciation, which would be figured on $60,000,000.

To accomplish that result, however, six assumptions are made. These are: That all municipal plants and private companies buy from the districts if the latter sell them energy below their present direct costs of generation; that the districts will sell these plants all the energy they need regardless of location; that in establishing energy prices the districts will establish class rates approximating the present costs of generation, but in every case sufficiently lower to induce purchase instead of doing their own generating; that the districts will be able to sell the same amount of power to the plants and systems that now import power at the same rate they are now paying; that the companies will purchase from Platte valley at least the same amount as in 1937; and, finally, that being interconnected they will act as a single unit in making sales.

Using this as a basis and accepting the estimated figures of costs made by the districts, he figures out that the total costs of operation will be $3,189,292. Of this sum he allocates $835,504 to irrigation, leaving $2,353,788 for power. The total includes $1,222,924 for general expense; for operation and financial expense, $1,966,368. Parenthetically, power company engineers say that the operating expense estimate is below actual expenses so far incurred as shown by the reports, and that on the basis of $40,000,000 of loans, interest and amortization at 5.7 per cent will be $2,280,000 a year. Farther on in his study Professor McNeill says that only the last two of his assumptions may be regarded as valid.

THE financial situation for the Nebraska districts was shown early this year at the congressional hearings on the Independent Offices Appropriation Bill for the next fiscal year. The status of four out of the five districts is shown in the following tabulation taken from the record made by a subcommittee of the House of Representatives. It will be noted that the Central Nebraska (Tri-County) District is not included, although it has been the

¶ "THE *big question mark in Nebraska, as at Washington, is what chance have the big three [projects] to pay out? Power company engineers say that the investment per unit of electric power capacity is three to five times what it would be for equivalent steam or oil engine plants. They insist also that the three of them could not carry the present demand load if called upon to supply it because their actual capacity is much less.*"

THE NEBRASKA POWER PROJECTS

District	*Authorized Bond Issues*	*PWA-RFC Holdings*	*Delinquencies (Interest)*	*Operating Deficit 9-10 Months 1939*
Loup River	$12,000,000	$9,268,000 (PWA)	$595,960	$49,226 (9 mos.)
Platte Valley	10,000,000	8,766,000 (PWA)	969,720	63,933 (10 mos.)
Middle Loup	850,000	72,000 (PWA) 582,000 (RFC)	1,988 23,280	
North Loup	1,000,000	916,000 (RFC)	36,640	
	$23,850,000	$19,604,000	$1,627,588	

recipient of more than half of the $63,000,000 of loans and grants made by the PWA to the five districts. However, the committee was told that the Tri-County District was not in default. This may be explained by the fact that it is still under construction, being scheduled for completion in November, 1940. The data on delinquencies shown in the table above reflect the condition as of December 15, 1939.

In the event of financial failure, the Federal government would have to take over these public power developments. Authority for their formation was given by the Nebraska legislature in 1933. It is expressly set out in the law that the credit of the state was not pledged for the repayment of any construction loans made them, and that the districts shall have no power to tax.

NEBRASKA people take a very realistic attitude toward the whole problem. They think that the state benefited largely from the expenditure of $60,000,000 in labor and materials; that the plants are in place and that they will be operated in the future under some form of control; that the reclamation of 320,000 acres of farm land in semiarid sections is highly desirable because of the addition to agricultural income; and that as the principal purpose of the Public Works Administration was achieved in the employment created, it may conclude to wipe out at least part of the indebtedness.

APPLICATION of the Nebraska public power districts to PWA for a reduction in interest rates has been turned down as setting a bad precedent for the other millions in loans by that bureau, but apparently a kindly ear is being lent to the suggestion that the time of repayment be extended to sixty years. This would materially cut down the annual repayment on principal to begin in a few years, and this would be in turn represented by a reduction in cost of production. Whether this would overcome the handicap in production costs caused by the fact that the two completed plants cost double what they were originally estimated to cost, thus dispelling the dream of cheap power, is still up in the air. Since the public plants have been constructed, the two largest private companies, rather than make further investment in plant, have contracted to buy district power, and surely within sixty years the demand ought to increase enough to keep all of the existing facilities busy.

The frank recognition by the managers of the power districts of the financial bog in which they are struggling because of inadequacy of markets and hence lack of income to meet interest and amortization costs is commendable. The public is entitled to know all the facts, since it is their money that has gone into the developments. Integration of management, as suggested first by Harold Kramer, general manager of Loup river, with the latter project supplying all power demands until its capacity has been exhausted, appeals as a businesslike arrangement for handling present problems.

—EDITORIAL *from Nebraska State Journal.*

Should the Government Control Radio Profits?

The author takes the unusual position that "rate regulation" is really "profit regulation" protecting utility customers from excessive rates only by accident; and he declares that there is much to say for the proposition that the licensing laws for radio broadcasting and water power for private use should be closely parallel in their treatment of profits of licensees.

By ROBERT E. STROMBERG

Everyone, including the radio industry itself, agrees that there must be regulation of radio in the United States by one body having jurisdiction throughout the country. There is little disagreement either that such regulation, to be of maximum effectiveness, should be supplemented by international agreement with respect to certain phases of radio's employment. The unanimity of thought ends here, however, for there are wide differences of opinion as to the proper bounds of radio regulation.

One school of thought holds that the regulatory efforts of the Federal government should be confined more or less to the various frequencies so as to avoid interference which, if unrestrained, might make radio useless. This group sees widening of the radio spectrum through scientific achievement as ultimately doing away with the necessity for even such narrow-scope regulation. Branching away from this conservative extreme will be found every shade of opinion to the diametrical line of thought. At this other extreme are those who would have the government itself assume the actual operation of all radio facilities, especially those devoted to transmission of educational, entertainment, and news programs, more generally referred to simply as "broadcasting."

The term "commercial radio licensees" embraces two distinctive groups. One is composed of the holders of radio broadcast licenses, such as the favorite station to which you tune your own radio. The other is made up of the common carrier licensees, such as the company which delivers your radio wire to a friend on a ship at sea. The type of business carried on by the first-named group is well known and the reader will readily appreciate why

members of the group are termed "commercial" licensees as distinguished from noncommercial. The designation given the second group is practically self-descriptive. They are the licensees who offer the public the familiar telephone, telegraph, and cable services but use the ether instead of wires as their transmission medium.

THERE has been no direct regulation of the rates charged by commercial radio licensees in the United States. In fact, so far as broadcasting is concerned, no legislation enacted has ever expressly dealt with rate regulation or limitation of profits in any form. The Radio Act of 1927 and the law later enacted in its place, the Communications Act of 1934, did and does require that broadcasters serve "public interest, convenience, or necessity" in order to obtain and retain their licenses. It has been suggested that this requirement could be so interpreted that realization of large profits by a broadcasting station would be *prima facie* evidence that it was not serving public interest in its operations.

Such a rule would no doubt tend to discourage broadcast stations from attempting to make unreasonably large profits. It might cause some stations to reduce their rates for "time on the air," or carry fewer commercial programs, or make other operating changes. It seems improbable that this would result in any general program improvement. Considering also the very remote effect, if any, that radio time rates have on the general public, the whole idea appears undesirable from a realistic standpoint and of very doubtful validity.

There has been, however, a certain amount of indirect regulation of the rates charged by common carrier radio licensees such as the radio-telegraph companies. While there is Federal legislative authority for direct, independent regulation of the interstate rates of such carriers, as a practical matter it is inoperative. The indirect regulation results from the fact that the rates of the competing "land wire" carriers are regulated, and the radio carriers cannot set their rates any higher than these and obtain any business.

THERE is no direct regulation of rates of the radio carriers because point-to-point communication by radio is generally of lower cost to the carrier than communication between the same points by wire. This calls for lower rates for the radio communications, but if the radio-message rates were lowered, the carriers by wire would have to follow suit to meet radio competition. Such lower-than-cost rates would put the wire companies out of business and the radio carriers would find it impossible to secure enough radio transmitting channels to handle all the messages offered. Hence, in the interest of maintaining an adequate national communications system, the radio carriers cannot be asked to cut rates. This situation places the radio carriers in position to make large profits on the business they do carry. After reading the balance of this discussion, which deals with broadcasters exclusively, the reader will see the great similarity of the excess profits problem as it exists in both groups of the commercial licensees.

The Congress, when it first took up detailed radio regulatory legislation, seems to have seriously considered clas-

Commercial Radio Licensees

"THE term 'commercial radio licensees' embraces two distinctive groups. One is composed of the holders of radio broadcast licenses, such as the favorite station to which you tune your own radio. The other is made up of the common carrier licensees, such as the company which delivers your radio wire to a friend on a ship at sea."

sifying broadcasters as common carrier public utilities subject to the usual public obligations of common carriers and to regulation of rates. This was at a time when radio broadcasting was not fixed in the public mind as a business providing its owners with rich profits. Of late there seems to have been more general acceptance of the proposition that it would not be to the public advantage to require broadcasters to sell time to all comers, and that if they are not common carriers, they are not public utilities in any sense.

IT is probably fortunate that broadcasting stations have never been treated as common carriers. Such a status would require that broadcasters accept business as offered. They would not be able to allot time with an eye to the type of program proposed to be put on by the purchaser. The latter practice is now possible under the business set-up of broadcasting as it has always existed in this country. It has undoubtedly contributed greatly to balanced programs and general program quality.

In the absence of rate regulation, choice radio time will go to the users able to pay the highest prices for it. But if broadcasters do not have to observe common carrier restrictions, they will at least tend to sell their time to advertisers who possess good program taste, as well as financial resources.

Moreover, the common carrier status is generally accompanied by rate regulation. If broadcasters were required to offer time on the air at prices calculated to produce profits amounting to only a reasonable return on their investments, the resulting rates would likely be so low as to bring a flood of applicants for time far greater than could be accommodated. To require broadcast station operators to choose their customers from among such an excess of applicants would subject them to an intolerable burden.

Therefore, broadcasting stations should not be treated as common carriers whether or not accompanied by rate regulation. Whether time rates for broadcasting should be regulated at all (even on an individual contract basis, rather than an equal-to-all common carrier basis) is still another angle of the problem.

In the transportation field, the service offered by a noncommon carrier (such as a "contract" trucker) may be as essential to the user and high rates as burdensome on him as the service of a common carrier. But in radio broadcasting the service offered is not particularly essential to any of the purchasers. Here the "user" is the commercial advertiser or "sponsor." Advertising is offered in a highly competitive market and is available from many sources and in various forms—newspapers, magazines, billboards, street car placards, and so forth. The force of this competition is bound to keep broadcasting rates within reason. There is, then, no reason to regulate them on grounds of protecting the "consumer" from exploitation through excessive rates.

At this point the reader may ask why, if rate regulation is not called for because radio time users do not need protection against excessive rates, should there be any excuse for governmental interference with the profits of broadcasters? The answer lies in the fundamental concept of public utility rate regulation generally. Is rate regulation resorted to solely to protect the consumers of a necessary service offered by a lawful monopoly from unreasonable rates? Could an affirmative answer to such a question be consistent with the actual results of public utility rate regulation?

The standard by which the reasonableness of a regulated rate is ordinarily measured by courts and commissions in the United States is not its relation to the level of prices generally, but merely whether or not it will produce for the seller an excessive profit. A regulatory body cannot legally order a regulated rate level reduced if the new reduced rates do not promise to provide fair profits for the private business concerned. This is true even though the old rates are so high that they impose the severe burdens on consumers having practically no choice but to use the services offered. In view of such results, the designation "rate regulation" for the process would appear to be a misnomer. It might far more properly be called "profit regulation" for that is what it really amounts to.

When rate regulation is considered in the light of its actual rôle of profit restrictor, it may be seen that it protects utility consumers from high rates only by accident. It is actually and primarily a device to keep the operators of the regulated business, who would otherwise be in a position to make excessive profits because of public grants (monopoly, right of way, etc.), from "cashing in" too heavily on their advantage.

Both radio broadcasters and the conventional public utilities are in just such a favorable position for profit opportunities. This would make it appear reasonable that they should be subjected to comparable curbs on their profits. The "ether," the radio broadcasters' right of way, is a natural resource of incalculable value. It is and

must continue in public ownership. This principle is recognized in the radio regulatory laws of the United States, which provide that applicants for radio licenses must sign "a waiver of any claim to the use of any particular frequency or of the ether as against the regulatory power of the United States. . . ."

Since the ether belongs to the people as a whole, unearned benefits derived through private exploitation of it should be applied for the benefit of the people as a whole. Radio broadcast rate regulation would not benefit any considerable number of the public. The alternative would be for the Federal government to bring under its control these unearned benefits, excessive profits in other words. The logical method of this suggested appropriation of profits would appear to be a legislative provision for recapture of excess profits of broadcasters.

How these funds might be applied for the benefit of the people as a whole (whether covered in the general treasury balance, allotted to the assistance of broadcasters serving sparsely populated, unprofitable areas, employed for governmental radio activities, or any of many possible dispositions) is beyond the scope of this discussion. Nor need we concern ourselves here with the severity of the profit restrictions that might be imposed (*i. e.*, whether broadcasters are entitled to higher returns than are allowed the average public utility in recognition of claimed high degree of risk, early losses, and so on). The point is that there is sound justification, under the principles of regulation which have been worked out for many years, to regulate the broadcasters—not as to the actual rate structure for selling time on the air—but entirely on the basis of excess profits if, as, and when they occur.

There is nothing new about a proposal to restrict the profits of the users of a natural resource of the United States.

There has long been in force Federal legislation providing for the regulation of the rates and charges made for electric energy produced in hydroelectric plants located on navigable streams. This power could not be priced particularly high, even in the absence of rate regulation, because it is generally offered for sale in wholesale lots in a competitive market. Municipalities and other operators of local power distribution systems are usually the purchasers. They would not pay any extortionate prices because their requirements could be filled by existing steam power plants.

¶ "If *broadcasters were required to offer time on the air at prices calculated to produce profits amounting to only a reasonable return on their investments, the resulting rates would likely be so low as to bring a flood of applicants for time far greater than could be accommodated. To require broadcast station operators to choose their customers from among such an excess of applicants would subject them to an intolerable burden.*"

THE only thing such rate regulation accomplishes is to give the public the benefit of the economies of water-power production of electricity as compared with steam. The public apparently receives this advantage in recognition of the fact that public resources are employed in production of the power. The proposition stated in another way is that rate regulation for water-power licensees operates to limit their profits and must have been conceived largely with that end in view.

A striking example and precedent for treating excessive profits of radio broadcast licensees as public property is found in § 10(e) of the Federal Power Act which provides "for the expropriation to the government of excessive profits" of licensees.[1] The following quotation from the first annual report of the Federal Power Commission (covering the fiscal year ended June 30, 1921) is explanatory of the intent and effect of this portion of the law:

> The Act also provides for "the expropriation to the government of excessive profits until the respective states shall make provision for preventing excessive profits or for the expropriation thereof to themselves, or until the period of amortization . . . is reached." A distinction should be drawn between "excessive profits" and the surplus earnings previously discussed. The former are to be construed in the sense of profits so "unreasonable" or "extortionate" that the drastic procedure of expropriation is justified. Profits of this nature can arise only in absence of rate regulation, and, since the power to regulate the rates of all licensees which are public utilities is possessed either by the states or by the commission, expropriation need be resorted to only in the cases of licensees who are not public utilities. . . . If the state has not created a regulatory agency of its own, then in the case of a public utility the procedure which in the public interest the commission should take is so to reduce rates that excessive profits will not be earned rather than to collect such profits as charges to be paid into the Federal Treasury. If excessive profits are earned by a licensee which is not a public utility, they can be reached only by the commission and through proceedings for their expropriation as provided by the Act.

THE "licensee which is not a public utility," mentioned in the quotation just above, presents the greatest similarity to what broadcasting station licensees claim themselves to be. The nonpublic utility water-power licensee sells no power so there are no purchasers to be protected against excessive rates. This compares with the broadcast licensee whose customers, as we have seen, need no protection against high rates.

The water-power licensee may confer a positive benefit on the public in that his water-power project may improve the navigability of the stream on which located. In this respect the broadcaster can point to news and entertainment furnished the public without charge. A condition of the water-power license is that the licensee may be prevented from making excessive profits from it. If this is sound license theory for water power, it would appear equally applicable and equally sound for broadcast licenses. There is surely much to say for the proposition that the licensing laws for radio broadcasting and water power for private use should be closely parallel in their treatment of profits of licensees.

[1] Another Federal legislative precedent along this line was the "recapture clause" (§ 15a) of the Transportation Act, whereby excessive profits of more profitable railroads were to be pooled for the benefit of weaker lines. This section was later repealed chiefly because of administrative difficulties.

Wire and Wireless Communication

THE U. S. Supreme Court on February 5th granted leave to the National Association of Railroad and Utilities Commissioners to file a brief *amicus curiae* in the recent appeal of the Wisconsin Public Service Commission from an adverse decision of its own highest state court in setting aside 1936 rate reduction orders involving the Wisconsin Telephone Company. Immediately thereafter the court denied the petition of the Wisconsin commission for a review of the decision of its own highest court.

On the face of it, this action somewhat resembled sending out an invitation to a party that had been called off. But what the U. S. Supreme Court probably intended was to indicate that it had given full consideration to the arguments of the NARUC as well as the four Federal agencies which had also filed briefs *amicus curiae* supporting the position of the Wisconsin commission.

Under the rules of the highest court, it was not necessary for these Federal agencies to ask for leave before filing their briefs. These agencies included the FCC, the ICC, the FPC, and the Internal Revenue Bureau. In the face of such pressure from sources outside of the proceeding—all urging that the highest court take the Wisconsin Telephone Case under review—the court's action in denying the same is perhaps somewhat significant.

IN other words, the court refused to be stampeded into using this case as a vehicle for a "reëxamination" of fundamental valuation theories, such as Reproduction Cost *v.* Prudent Investment (or Original Cost) and Observable Depreciation *v.* Depreciation by Life Expectancy Tables.

The weakness of the appeal, however, was the fact that the Wisconsin Supreme Court had not set aside the rate reduction order of the Wisconsin commission because of confiscation or upon any other ground that would provide a substantial Federal question ordinarily reviewable in Washington. What the Wisconsin state court did do (30 PUR(NS) 65; 287 NW 122) was to rule that, under the Wisconsin statutes, the commission has authority to fix only reasonable and lawful rates after a finding that the preëxisting rates of a utility were unreasonable. In this case the Wisconsin commission had failed to show that the existing telephone rates were unreasonable—at least to the satisfaction of the state court.

In its brief memorandum opinion, the U. S. Supreme Court stated "the petition for writ of *certiorari* is denied upon the ground that the court is unable to find that the decision of the highest court of the state did not rest upon an adequate non-Federal ground" (cases cited).

* * * *

THE United States Independent Telephone Association has appointed a new representative in Washington, D. C. He is William Bruckart, veteran newspaper correspondent, who, for the last two decades, has been engaged in Washington in financial and business journal-

CHANGES IN TELEPHONE HAND-SET CHARGES DURING CALENDAR YEAR 1939

(Compilation by the FCC from AT&T data)

	Alabama	*Arizona*	*Arkansas*	*California*	*Colorado*
Charge Jan. 1, 1939	15¢ per month for 24 months	No charge	15¢ per month for 24 months	10¢ per month for 12 months	No charge
Date of change ...	April 1, 1939	.....	.....	July 1, 1939	.....
Rate after change.	No charge	.....	.....	No charge	.....
Charge Jan. 1, 1940	No charge	No charge	15¢ per month for 24 months	No charge	No charge

	Connecticut	*Delaware*	*Dist. of Col.*	*Florida*[1]	*Georgia*
Charge Jan. 1, 1939	No charge	No charge	No charge	15¢ per month for 24 months then 5¢ per month without time limitation	15¢ per month for 18 months
Date of change ...	.....	.....	.....	.....	March 1, 1939
Rate after change.	.....	.....	.....	.....	No charge
Charge Jan. 1, 1940	No charge	No charge	No charge	15¢ per month for 24 months then 5¢ per month without time limitation	No charge

	Idaho[2]	*Illinois*[3]	*Indiana*	*Iowa*	*Kansas*[4]
Charge Jan. 1, 1939	No charge	No charge	15¢ per month for 24 months	10¢ per month for 18 months	15¢ per month for 24 months
Date of change ...	.....	.....	.....	Jan. 1, 1940	.....
Rate after change.	.....	.....	.....	No charge	.....
Charge Jan. 1, 1940	No charge	No charge	15¢ per month for 24 months	No charge	15¢ per month for 24 months

	Kentucky[5]	*Louisiana*	*Maine*	*Maryland*	*Massachusetts*
Charge Jan. 1, 1939	15¢ per month for 18 months	25¢ per month for 18 months	No charge	No charge	No charge
Date of change ...	.....	.....	.....	.....	.....
Rate after change.	.....	.....	.....	.....	.....
Charge Jan. 1, 1940	15¢ per month for 18 months	25¢ per month for 18 months	No charge	No charge	No charge

	Michigan	*Minnesota*	*Mississippi*	*Missouri*	*Montana*
Charge Jan. 1, 1939	No charge	15¢ per month for 24 months	15¢ per month for 24 months	15¢ per month for 12 months	15¢ per month for 18 months
Date of change ...	.....	Jan. 1, 1940	.....	July 1, 1939	.....
Rate after change.	.....	No charge	.....	No charge	.....
Charge Jan. 1, 1940	No charge	No charge	15¢ per month for 24 months	No charge	15¢ per month for 18 months

	Nebraska	*Nevada*	*N. Hampshire*	*New Jersey*	*New Mexico*
Charge Jan. 1, 1939	10¢ per month for 18 months	15¢ per month for 18 months	No charge	No charge	No charge
Date of change ...	Jan. 1, 1940	.....	.....	.....	.....
Rate after change.	No charge	.....	.....	.....	.....
Charge Jan. 1, 1940	No charge	15¢ per month for 18 months	No charge	No charge	No charge

	New York	*No. Carolina*	*North Dakota*	*Ohio*	*Oklahoma*[6]
Charge Jan. 1, 1939	No charge	15¢ per month for 18 months	10¢ per month for 18 months	15¢ per month for 18 months	15¢ per month for 18 months
Date of change ...	.....	.....	Jan. 1, 1940	Jan. 1, 1940	.....
Rate after change.	.....	.....	No charge	No charge	.....
Charge Jan. 1, 1940	No charge	15¢ per month for 18 months	No charge	No charge	15¢ per month for 18 months

	Oregon	*Pennsylvania*	*Rhode Island*	*So. Carolina*	*South Dakota*
Charge Jan. 1, 1939	10¢ per month for 12 months	No charge	No charge	15¢ per month for 18 months	10¢ per month for 18 months
Date of change ...	.....	.....	.....	.....	.....
Rate after change.	.....	.....	.....	.....	.....
Charge Jan. 1, 1940	10¢ per month for 12 months	No charge	No charge	15¢ per month for 18 months	10¢ per month for 18 months

	Tennessee	*Texas*[7]	*Utah*	*Vermont*	*Virginia*
Charge Jan. 1, 1939	No charge	15¢ per month for 12 months	No charge	No charge	No charge
Date of change ...	.....	.....	.....	.....	.....
Rate after change.	.....	.....	.....	.....	.....
Charge Jan. 1, 1940	No charge	15¢ per month for 12 months	No charge	No charge	No charge

	Washington	*W. Virginia*	*Wisconsin*	*Wyoming*	*Hawaii*[8]
Charge Jan. 1, 1939	15¢ per month for 18 months	No charge	8¢ per month without time limitation	No charge	No charge
Date of change ...	.....	.....	.....	.....	.....
Rate after change.	.....	.....	.....	.....	.....
Charge Jan. 1, 1940	15¢ per month for 18 months	No charge	8¢ per month without time limitation	No charge	No charge

Note: There are 31 states with no hand-set charge as of January 1, 1940.

[1] The hand-set charge was changed to 15 cents per month for twenty-four months on January 11, 1940.

[2] The charge of 15 cents per month for twelve months in the operating territory of the Pacific Telephone and Telegraph Co. in Idaho was eliminated, effective October 1, 1939.

[3] The data shown for Kansas apply to the operating territory of the Southwestern Bell Telephone Co. in Illinois.

[4] In the Kansas exchanges formerly served by the United Telephone Company, the rate is 15 cents per month without time limitation.

[5] The hand-set charge will be eliminated, effective July 1, 1940.

[6] The charge was eliminated in a few small exchanges in Oklahoma on August 1, 1939.

[7] The data shown for New Mexico apply to the operating territory of the Mountain States Telephone and Telegraph Co. in Texas. In Dallas, Houston, San Antonio, and a number of smaller exchanges no charge applies. In a few exchanges the charge is 15 cents per month for twenty-four months.

[8] Data for Hawaii supplied by the public utilities commission of the Territory of Hawaii.

ism for the Associated Press, the *Philadelphia Public Ledger*, the *United States Daily*, and other periodicals.

More recently Mr. Bruckart has been active as a Washington columnist for a great chain of weekly newspapers. He will continue this work, as well as carry on his new duties as the USITA Washington representative.

Mr. Bruckart was born and raised in Missouri and began his early career with newspapers in Kansas. He is also a member of the District of Columbia Bar but has not engaged in active legal practice.

* * * *

AIMED specifically at persons using the telephone "to dun or demand payments of debts," a bill was introduced in the state senate by William R. Attkisson, Louisville, that would make subject to fines of $10 and $20 and imprisonment of thirty days to six months persons using "violent, abusive, profane, and indecent language" over the telephone. It applies to all telephone users, however.

Furthermore, it would prevent even "polite talking" collectors from calling anyone to the telephone or leaving word for him to call back unless the phone called were listed "in the telephone directory in the rightful name" of the debtor.

So far as the "tough talk" is concerned, it wouldn't make any difference

under the bill if it were "in the vernacular or foreign or other language."

The measure recites that "many unscrupulous persons and firms are setting up racketeering and strong-arm collection agencies . . . to the great hurt and injury to the legal profession and to the great injustice to the hard pressed and, in many instances, purely innocent victims of their vicious methods."

It adds they "often coerce their subjects into illegal settlements by threats of injury to their person." The bill concludes:

> An emergency is hereby declared to exist and this act shall take effect from and after its passage and signature by the governor.

* * * *

THE FCC was fairly busy during the past month with the subject of television. A week of testimony was followed by a program of actual inspection through the various television plants in the East.

Incidentally, the Chesapeake & Potomac Telephone Company and its parent, the American Telephone and Telegraph Company, were authorized by the FCC to install four new coaxial units between Washington and Baltimore. Recent discoveries and improvements claimed by the Radio Corporation of America in the field of relaying television broadcasts through a series of booster transmitters indicate that the expensive coaxial cable may not be as important an instrument in breaking the limited horizon of television broadcasts (so as to permit anything approaching a chain network) as had been previously expected.

However, the new coaxial cable circuits are needed far more just now in handling long-distance telephone traffic than for television pipe lines. New links between the nation's capital and Baltimore reflect the growing telephone toll traffic in this area. There is also unquestionably the factor of strengthening the national defense to be considered, in view of the fact that such cables may eventually link up with the Philadelphia-to-New York coaxial line so as to provide a wealth of uninterrupted underground circuits over the entire distance between the nation's largest city and the nation's capital.

Some idea of the expense involved in this work can be seen in the announcement that the 4-coaxial unit project between Washington and Baltimore—a distance of 42 miles (slightly longer than the rail and highway routes)—will cost approximately $820,000 to construct. Of this amount the AT&T will bear over a half million.

A short spur at Ellicott City will link the line into the regular cables out of Baltimore to Frederick, Md., and the West.

* * * *

COMMUNICATIONS affairs were not moving very fast in Congress during the month of February. Chairman Wheeler of the Senate Interstate Commerce Committee, tied up with railroad legislation, indicated that his body would not even get to hearings on the proposed merger of the two national telegraph systems, recently recommended by the FCC, until late in March. And there seemed no particular pressure from any quarter to prod such legislation.

Senator O'Mahoney, chairman of the Temporary National Economic Committee, made a couple of announcements of the future agenda of his committee which were of passing interest to the communications industries. One was that certain reports on the committee's hearings to date would be sent up to Congress some time during March. These will probably include an analysis of the controversial competitive bidding issue on the underwriting of securities, especially Bell system securities. A special staff of the SEC was understood to be helping out on this report under the guidance of Commissioner Henderson, who is also a member of the O'Mahoney committee.

Also scheduled to take place around April 1st were hearings by the O'Mahoney committee on the problem of technological unemployment, which are quite likely to go into the subject of the effect of dial installations on the employment opportunities of the telephone industry.

Financial News and Comment

By OWEN ELY

Taxes Still Increasing

WHILE final returns for the year 1939 will not be available for some time, and interim reports do not always separate taxes from operating expenses, enough data seems at hand to indicate another substantial increase in taxes. The nine large systems listed in the accompanying table paid out approximately $148,000,000 in taxes in the latest twelve months' periods reported, compared with $138,000,000 in the corresponding previous periods, or an increase of about 8 per cent. Since revenues increased only 4 per cent, there was an increase in the average ratio of taxes to revenues from 16.5 per cent for 1938 to 17.2 per cent in 1939.

The accompanying chart shows the ever-increasing drain on utility earnings due to local, state, and Federal taxation. Since 1935, when the New Deal pogrom against the utilities began to gain momentum, the trend has been increasingly adverse.

As indicated in the chart, stockholders have had to pay the penalty. The decline in the proportion of revenues available for stockholders almost equals the increased proportion to which governmental units have helped themselves. Despite the fact that kilowatt-hour output has increased nearly two-thirds in the past twelve years, the average revenue per kilowatt hour has been reduced from 2.7 cents to about 2.1 cents, which meant a reduction of some 22 per cent in gross due to lower average rates. After the consumer had taken his big slice, the government increased its "cut" from 10 to 17 per cent of gross.

Because of its inherent strength, the industry has been able thus far to stand these inroads, but can it continue to serve the public efficiently if the trend persists? Can investors be persuaded to supply the necessary equity funds to preserve a well-balanced capital structure, as the SEC desires?

CONSOLIDATED Edison of New York has been a conspicuous leader in demonstrating to the public, through newspaper advertising and other publicity, the size of its tax burden, which is perhaps the heaviest borne by any of the large systems. Other companies should wage similar campaigns. Other possible measures are the following: (1) Publi-

INCREASED RATIO OF TAXES TO REVENUES

	Twelve Months Ended	*Ratio Taxes to Revenues 1939*	*1938*
American Gas & Electric	Nov. 30	14.3%	13.7%
Boston Edison	Sept. 30	18.4	18.6
Commonwealth Edison	" "	17.6	17.2
Consolidated Edison	" "	21.4	20.8
Consol. Gas of Balto.	" "	14.8	14.8
Detroit Edison	Dec. 31	14.6	14.0
Engineers Public Service	Nov. 30	12.9	12.1
North American Co.	Sept. 30	16.0	15.5
United Light & Power	Nov. 30	12.7	12.2
Averages		17.2%	16.5%

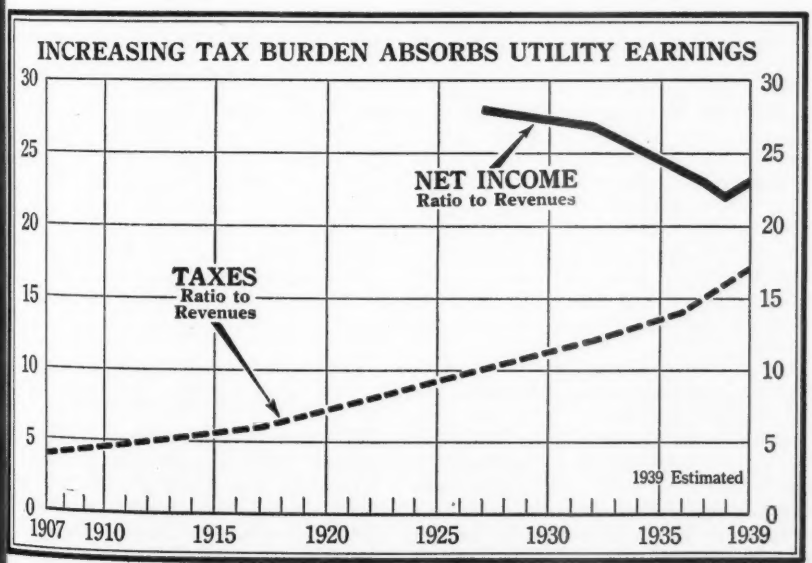
cation of a separate item for taxes (instead of combined expenses and taxes) in all interim and annual statements; (2) publication in the annual reports of a complete breakdown of taxes, showing in detail the payments made to various governmental agencies and the basis of each payment; (3) charts and comparisons in annual reports similar to those here presented; (4) leaflets to be mailed with customers' bills, giving tax details and explaining that high taxes prevent rate reductions; (5) analysis of the reasons for recent tax increases, and inquiry as to whether the legal and publicity departments foresaw and attempted to forestall them—and whether better organization or stronger efforts are needed to combat further levies, assessments, etc.; and (6) appeals to public agencies for repeal or modification of present tax laws and rulings.

The public service commission of New York, in a recent order unanimously granting Rochester Gas & Electric Corporation an increase in electric rates, condemned high utility taxes as the "predominant cause for increased service charges." (See p. 308.)

Commissioner Burritt pointed out that the company's deficit was caused primarily by increased taxes, which accounted for over half of it. Moreover, the increased rates to be borne by customers must include not only an amount sufficient to take care of the company's deficit, but nearly 25 per cent more as a contribution to government. New York state levies a normal one-half of one per cent gross earnings tax and an emergency 2 per cent tax on gross, in addition to which cities can levy a 1 per cent emergency tax. (Query: When will the "emergency" be over?) Federal income taxes on the additional income are 16½ per cent, making a total of nearly 20 per cent automatically taken out of any rate increase before it reaches the company's security holders.

SEC Explains Position on Common Stock Financing

THE SEC, which had permitted the $25,000,000 Dayton Power & Light offering to proceed February 8th with underwriters' fees temporarily im-



pounded, rendered its final decision February 12th. The issue, consisting of first mortgage 3s due 1970 at 104, was successfully offered by the Morgan Stanley syndicate at the low yield of 2.8 per cent to maturity.

The sinking fund of 1½ per cent per annum, which should retire 45 per cent of the issue by maturity, is perhaps the heaviest ever imposed on a high-grade utility issue.

The SEC decision was of special interest from three angles: (1) bond *versus* common stock financing for new money, (2) arm's-length bargaining with special reference to Morgan Stanley & Co.), and (3) the trend toward competitive bidding.

The commission did not give clear-cut answers to any of these issues but nevertheless somewhat clarified its stand. The Dayton financing involved $5,000,000 "new money" and was the first such case since the SEC refused to allow Consumers Power to raise $10,000,000 new money through sale of bonds. The commission pointed out certain differences in the two cases. The Dayton Company, doing business in the state in which it is incorporated (unlike Consumers Power), could make its application under § 6B of the Holding Company Act instead of the more stringent § 7. Also the company's indenture limitations on future bond issues, its strong sinking fund, and the testimony of its officers indicated a conservative financial policy with regard to future indebtedness.

The SEC did not pursue the issue of arm's-length bargaining, but instead criticized the form of underwriting contract used by Morgan Stanley, with special reference to the mechanics of the firm's obligation to take back unsold bonds.

THE fact that Morgan Stanley contented themselves with the unusually low underwriting spread of 1¾ per cent (compared with 2 per cent on the Consumers Power offering) brought forth blame rather than praise. Commissioners Henderson and Eicher apparently regarded the smaller fee with suspicion, as indicating that "purely fortuitous" circumstances might govern fixing of fees. If the SEC is to discharge its duties under the Holding Company Act, the commissioners held, "underwriting must be given a framework more easily observed and less easily abused than what is so hopefully and euphemistically described as 'negotiation.'" They also raised the question whether the bankers had been overanxious to increase their aggregate fee because the original plan of the company had been merely to raise new funds, while Morgan Stanley had suggested the larger bond issue which included the refunding. The commissioners failed to stress the point that, whether or not the fees were a consideration, the bankers had rendered a considerable service to the company in successfully carrying through the refunding operations on a very low-yield basis.

For the moment, apparently, the commission does not plan any steps in the direction of "competitive bidding," but the veiled threat remains—at least in the language of two commissioners.

As regards the majority comment that the 1¾ per cent underwriting spread was "not noticeably out of line with the charges in other issues," it may be mentioned that only one utility issue in the past year and only four or five in the past five years carried a smaller spread. A small spread gives bond salesmen little incentive to work on placing an issue. In the case of Southwestern Bell Telephone, only ¼ point was allotted to salesmen who (theoretically, at least) placed the bonds, this being the same as the commission for selling an existing bond on the stock exchange or over-the-counter.

"Arm's-length Bargaining" Inquiry Broadened

THE SEC on February 2nd issued an order against Dillon Read & Company and Northern Natural Gas Company (North American Company system) requiring them to prove that there had been arm's-length bargaining

between them last August in connection with the private sale of $16,000,000 first 3¼s to institutions. While the bonds were not underwritten, Dillon Read was to be paid a fee of $80,000 for placing the bonds, but this has been held up by the SEC.

This is the third recent case in which the SEC has raised the issue of arm's-length bargaining, the other two being the Consumers Power and Dayton Power & Light offerings underwritten by Morgan Stanley & Co.

Sale of Indianapolis P. & L. Stock Proposed

WHILE the public sale of common stock by electric power and light companies for raising new capital has become almost a forgotten practice, there have been several instances in recent years of the successful distribution of common stock of operating units previously held by holding companies. It seems probable that, with the effort to conform to § 11, such offerings may become more frequent in the future.

It has sometimes been assumed that the important utility systems would solve their geographical integration problems by selling to each other or "swapping" properties among themselves. Such a solution presupposes either a plentiful supply of cash on the part of the buying company (since the practice of former days, of financing purchase by sale of holding company bonds, would probably be frowned on by the SEC), or the ability to "match" one property against another on a fairly even price basis and in such a way as to conform to the geographical needs of both systems. Much the simpler course would be to "unload" unwanted operating units on the public itself. The utility companies have for years been hoping for higher price levels for operating company stocks in order to carry out such a program, but may now be reconciled to the "realities" inherent in an SEC-dominated industry. In any event, the price-earnings ratios of the 1920's were, in many cases, admittedly fantastic. Current price-earnings ratios for leading companies range from about 12 to 17, as follows:

	Price About	*Approx. Share Earnings*	*Price-Earnings Ratio*
Boston Edison	149	$9.75	15
Commonwealth Ed.	32	2.45	13
Consol. Edison	32	2.25	14
Consol. Gas of Balto.	82	4.94	17
Detroit Edison	122	7.58	16
Pac. Gas & Elec.....	34	2.84	12
South. Calif. Ed. ...	30	2.46	12
Average			14

Since these companies are well known to most investors and represent "the cream of the crop," it would, as a rule, be necessary to offer the stocks of smaller operating companies at lower multiples of earnings. There have been only two important sales of such stocks over the past year or so. In May, 1939, Utilities Power & Light sold about 60,000 shares of the common stock of Newport Electric Corporation to a banking syndicate, which made a public offering at about ten times earnings. Last August a large block of Washington Gas Light Company (86 per cent of the outstanding amount) was sold to the public at about thirteen times earnings. While the latter ratio seems high, it was explained by the company's exceptional dividend record over a long period of years.

ATLAS Corporation, manager of the reorganization plan of Utilities Power & Light Company (to be known as Ogden Corporation as soon as pending litigation is cleared up), is negotiating with a syndicate to be headed by Lehman, Goldman Sachs, and First Boston for the public offering of all the common stock, and some of the preferred, of Indianapolis Power & Light Company. Since the system reorganization is technically not yet completed, permission of both the Federal court and the SEC must be obtained, so that some weeks may elapse before the actual offering.

Indianapolis Power & Light Company, formed as a consolidation of two units in 1926, has been a fully owned part of

the Utilities Power & Light system since that date.

The question of pricing the common stock is a difficult one. As of December 31, 1937, a consulting engineer valued the common stock equity at $13,500,000, since which time earnings have increased and the property has been improved. It is now proposed to offer the stock at about $15,500,000 or $16,000,000 (645,980 shares at about $25 or $26 a share). The proposed price would be about 12½ to 13 times last year's earnings, which are estimated at $2 a share. Based on recent dividend payments, the yield would be about 6 per cent.

Proceeds from the sale of the stock would be used by Ogden Corporation (successor to Utilities Power & Light) to retire at issuance all its $12,835,000 debenture 4½s. There is also the possibility that part of the funds (together with proceeds of other sales) might be used to retire 30 per cent or more of the new $2.50 preferred stock (192,534 shares).

The stamped Utilities Power & Light 5s and 5½s have been selling recently around 105, with prices on the new Ogden Corporation 4½s, preferred stock and common about 100, 43, and 3½, respectively. For each $1,000 Utilities Power & Light 5 per cent and 5½ per cent debenture there would be exchanged $400 of new Ogden Corporation 4½ per cent sinking-fund debentures, 6 shares of $2.50 preferred, and about 78 shares of common.

Pending Financing

ONE of the smaller "prewar" issues which have been held in registration through continued amendments—$7,750,000 Marion-Reserve Power Company 20-year 3½s—was offered by a White Weld & Company syndicate February 15th. The financing also included $1,240,000 2⅞ per cent 8-year serial notes (sold to the Chase Bank) and 7,500 shares of $5 preferred stock offered at 98 by the bond syndicate.

Southwestern Gas & Electric $16,000,000 first 3¼s of 1970 were offered by a Bonbright-Harriman Ripley syndicate on February 14th.

A smaller piece of financing, expected shortly, is the $3,800,000 issue of Indiana Associated Telephone Corporation first 3½s of 1970.

Kentucky Utilities has advised the SEC regarding its revised financial program. The offering will consist of $20,000,000 first 4s due 1970, $6,000,000 sinking-fund mortgage 4½s due 1955, and a $6,000,000 bank loan (the latter replacing an equal amount of first mortgage bonds). First Boston Corporation will head the underwriting, which was expected about February 26th. In the new set-up, two Chicago banking houses which had originated the financing and were first named as principal underwriters, were replaced by the First Boston Corporation.

The $42,225,000 Jersey Central Power & Light financing (First Boston Corporation), originally scheduled several months ago, still apparently awaits SEC determination as to whether the company is an operating or a holding company.

What Will National Power & Light Do with Its Cash?

NATIONAL Power & Light on September 30th held over $19,000,000 cash, of which about $16,000,000 was in "temporary cash investments." Current liabilities amounted to only $1,190,010 and funded debt of the parent company was $18,148,500. (The latter figure showed a reduction of over $6,000,000 during the previous twelve months.)

The 6s of 2026 are currently around 112 (callable at 110) and the 5s of 2030 are around 107 compared with the call price of 106. As both issues are callable on thirty days' notice, it seems strange that they have not already been redeemed, either through a refunding operation or use of the company's cash, which was obtained in part through the sale of its Tennessee property.

In the twelve months ended November 30th, the parent company reported

"other income" of only $62,898, which appears to indicate that its temporary cash investment was in short-term governments or other securities of nominal yield. Retirement of the bonds would eliminate fixed charges of about $1,000,000 and increase earnings per share on the common stock from the 67 cents reported for the twelve months ended November 30th to about 85 cents per share. The common stock is currently quoted around 8, with a yield (based on the annual 60 cents dividend rate) of about 7½ per cent.

It is possible, of course, that the Electric Bond and Share management has other uses for the cash, in connection with its broad integration plans for the several systems in the Electric Bond family.

Eventually, Mr. Groesbeck has indicated, he plans to regroup all his domestic properties in three major systems—in the Northwest, in Texas and adjacent territory, and in Pennsylvania and neighboring states. The three new systems would be completely interconnected, and such interconnection might prove an expensive undertaking, toward which present cash backlogs could profitably be applied.

Success of Traction Plan Imminent

FURTHER steps have been taken to speed New York city's unification plan. Federal Judge Patterson has fixed an upset price of $50,000,000 for the mortgaged properties of the Interborough, decreed foreclosure of the refunding mortgage, and appointed a special master to conduct an auction sale. Hearings were to be held February 15th on the fairness of the unification plan for a division of the proceeds of the city's purchase payment.

On February 27th all creditors and security holders must show cause why the proposed plan is not fair, equitable and feasible.

The upset price of $50,000,000 insures that dissenting security holders will find it advantageous to accept the city's offer, since they will receive less from the court award than the city has offered under its plan. In fact holders of IRT 6 per cent notes and common stock cannot expect to receive anything unless they accept the city's offer by depositing.

B.-M.T. securities have been active and strong recently, indicating favorable Wall Street opinion as to the improved chances for the city's acquiring that company. The city was accepting tenders of undeposited securities; and, in view of the relatively small margin of undeposited securities, as compared with the required amount, there seems little doubt that the plan will be successful.

Interlocking Personnel under SEC Fire

As the opening gun in what may become a drive to break up interlocking personnel between utility holding companies and their service companies, the Public Utilities Division of the Securities and Exchange Commission has been seeking to force C. E. Groesbeck and S. R. Inch to retire as officers of either Electric Bond and Share Company, or Ebasco Services, Inc.

This was disclosed recently when the SEC commissioners heard oral arguments by Ebasco and the SEC utilities division on the declaration filed by Ebasco under § 13 of the Public Utility Holding Company Act.

Both Milton Cohen, counsel for the utilities division, and Commissioner Robert E. Healy made it clear that the commission's objection to the interlocking personnel of Electric Bond and Share and Ebasco, if sustained in that case, would also be applied generally throughout the utility field.

John F. Maclane, counsel for the company, objected that to do so would reverse a long line of contrary decisions by the SEC. Mr. Cohen suggested to the commission that it should overrule its earlier decisions and begin breaking up interlocking relationships, even including those already approved.

What Others Think

Municipal Utility Ownership Elections, 1934-1939

THE marked effect of Federal subsidies as an inspiration for municipal ownership of electric utilities is strikingly shown in a compilation of local elections on questions of public ownership during the six years from 1934 to 1939, inclusive. This record possibly does not include every single election held during the period covered. (Any omission is, of course, inadvertent and hardly likely to be of great importance). Yet, it clearly shows the trend throughout the period when the Federal government exerted unprecedented efforts to promote public power developments and by liberal cash grants and other devices encouraged cities, districts, and states to engage in the utility business.

Tightening of the Federal purse strings, through curtailment of PWA loans and grants, resulted in a substantial decrease in the number of public ownership elections in 1939. During the preceding year (1938) the high point had been reached with 172 elections. This was largely brought about by the campaign conducted by the TVA to establish itself as the dominant dispenser of electric power in Tennessee, and a similar drive by the Lower Colorado River Authority in eastern Texas. These two states accounted for almost exactly one-half of the elections in 1938 which resulted favorably for public ownership—52 out of 106. In 1939 the total number of elections dropped to 49, of which 25 favored public ownership.

A significant situation is disclosed by a study of the combined populations of communities voting for and against public ownership during the 6-year period. Although 306 elections resulted in victory for public ownership, as against 255 opposed, the total population involved in the 306 elections was less than one-third as large as that concerned with the 255 elections. Specifically: 306 elections favoring public ownership: population, 2,059,371; 255 elections opposing public ownership: population, 6,985,798.

THE above figures do not include the population of Oregon and Washington, in each of which substantial majorities were registered against public ownership proposals in statewide elections in 1936.

The overall effect of Federal subsidy upon the total number of municipal electric utilities in the United States—now that its influence is obviously diminishing—has been to reverse, for the present at least, a downward trend in the number of such municipal establishments. This is shown by the following table on total municipal electric utilities in the United States, as shown by the quinquennial U. S. Census figures since 1917, plus a total for 1939 obtained from the FPC:

TOTAL NUMBER OF MUNICIPALLY OWNED AND OPERATED ELECTRIC UTILITY ESTABLISHMENTS IN THE UNITED STATES BY YEARS

1917	2,318
1922	2,581
1927	2,198
1932	1,802
1937	1,860
1939	2,102

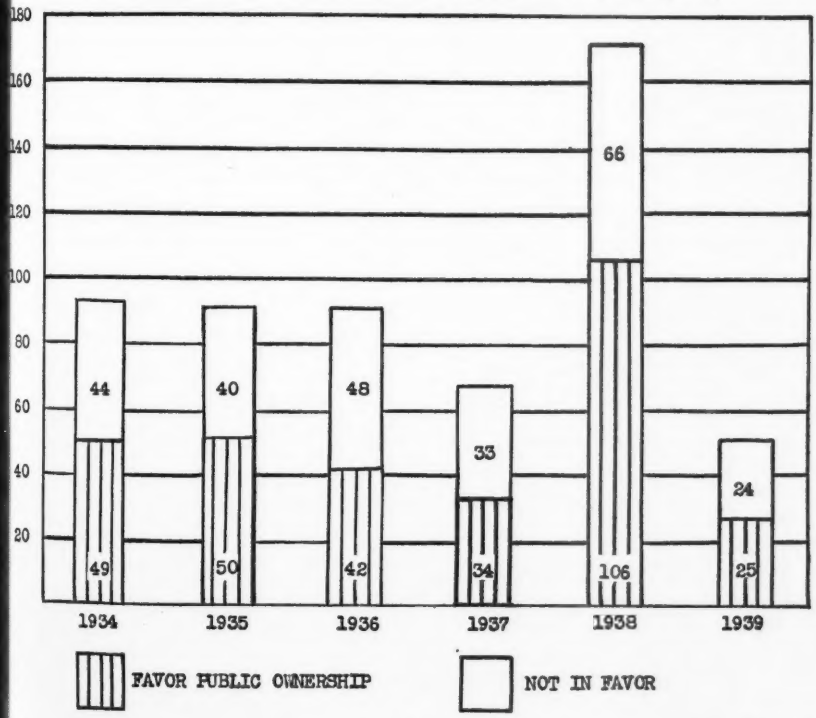
These totals plainly indicate that, so far, the impact of Federal subsidy upon municipal ownership of electric utilities has arrested a steadily diminishing trend in the number of such establishments, which reached its lowest point (as far as official figures are available) in 1932. Whether this Federal influence, which has resulted in bringing the number of municipal plants once more above the 2,000 mark for 1939, will sustain the total number remains to be seen.

IN this respect, the sharp drop off *in the number of elections held,* as well as in the number of municipal ownership victories (reflected in the accompanying charts) during the year 1939, as compared with the peak of PWA operations, would indicate that no new stimulus is likely to be experienced along this line in the near future unless the present temper of Congress changes sharply. And now that the sustaining hand of Federal subsidy is being withdrawn, it may be that natural economic forces under which municipal establishments were gradually being merged into private operations prior to 1933 will resume their function.

Of course, Federal stimulation in the direction of municipal ownership is likely to remain strong for some years in certain geographical spheres of influence, such as in the TVA area and in the Columbia river basin. Changing policies of future Federal administrations may affect these regional influences, but for the present their direction is obviously toward the encouragement of municipal utilities whenever and wherever possible.

In this connection it may be of passing interest to note that if it were not for such strong *regional* influence of the Federal government (augmenting the *financial* encouragement made nationally available through PWA operations), the total number of municipal elections studied during the 6-year period might show a balance against municipal ownership instead of in favor of it. Thus, if we leave out the election figures in italics, as shown on the state list on page 297 for the states of Tennessee and Texas, the

NUMBER AND RESULT OF MUNICIPAL ELECTIONS ON PUBLIC OWNERSHIP OF LOCAL ELECTRIC UTILITIES 1934-1939 (INC.)



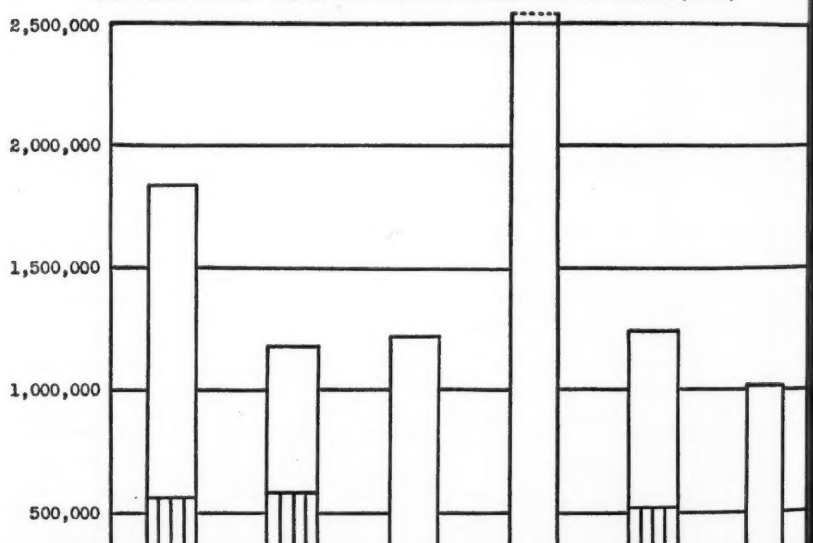
total number of municipal elections held during the 6-year period would have resulted in 254 in favor of municipal ownership and 255 against.

INCIDENTALLY, it might be observed, in discussing the overall downward trend of municipal establishments since 1917, that the number of privately owned electric utilities also diminished. Thus, U. S. Census figures show that in 1917 there were 4,224 of these so-called "commercial establishments," and in 1922, 3,774; in 1927, 2,137; in 1932, 1,627; and in 1937, only 1,340. However, this diminishing trend in commercial establishments is not at all comparable to the diminishing trend in municipally owned utilities, discussed above. This is for the obvious reason that, whereas a municipal utility by its very nature is generally confined to service within its own urban area, the privately owned utility commonly serves a large number of municipalities.

The diminishing number of private establishments, therefore, merely reflects the era of consolidation, merger, and sale which accompanied the rise of the holding company during recent years, rather than any curtailment of privately owned utility operations. Indeed, such holding company mergers were often followed by a definite expansion in operating territory.

Thus, according to the Federal Power Commission, privately owned utilities now serve approximately 89.6 per cent of the total number of communities in the United States receiving electric service,

RELATIVE POPULATION OF MUNICIPALITIES VOTING ON PUBLIC OWNERSHIP OF LOCAL ELECTRIC UTILITIES 1934-1939 (INC.)



STATE-BY-STATE RECORD OF MUNICIPAL OWNERSHIP ELECTIONS

	1939		1938		1937		1936		1935		1934		Totals	
	For	Agnst.	For	Agnst.	For	Agnst.	For	Agnst.	For	Agnst.	For	Agnst.	For	Agnst.
Ala.	..	..	..	..	3	1	1	..	..	..	2	1	6	2
Ark.	..	..	1	..	..	..	..	..	..	1	..	..	1	1
Calif.	..	2	..	..	..	6	..	3	1	2	2	2	3	15
Colo.	..	2	1	3	..	1	..	..	2	..	1	1	4	7
Conn.	..	..	1	..	..	..	..	..	..	1	..	..	1	1
Del.	..	..	1	..	..	..	1	..	1	..	..	..	3	0
Fla.	..	1	2	1	..	1	1	..	..	1	..	..	3	4
Ga.	..	..	..	..	..	..	..	..	..	..	1	..	1	0
Idaho	..	..	..	..	..	..	1	..	..	..	..	..	1	0
Ill.	..	1	1	..	1	..	1	1	3	1	1	4	7	7
Ind.	1	..	..	..	1	..	..	..	1	..	2	1	5	1
Iowa	5	2	3	4	4	3	4	3	5	4	9	4	30	20
Kan.	1	1	1	4	3	5	..	2	4	5	1	..	10	17
Ky.	..	..	5	..	2	3	4	2	..	2	..	..	11	7
La.	..	..	1	1	..	..	..	..	..	..	..	..	1	1
Mass.	..	..	..	..	..	..	..	..	1	..	1	1	2	1
Mich.	..	..	1	3	1	2	3	1	1	..	1	1	7	7
Minn.	1	1	6	8	1	1	..	2	4	1	4	2	16	15
Miss.	1	..	2	..	1	..	1	..	3	3	2	1	10	4
Mo.	..	..	7	9	1	1	1	1	2	1	1	3	12	15
Neb.	1	1	5	..	5	..	2	2	1	..	1	1	15	4
Nev.	..	..	..	..	..	..	..	..	..	..	1	..	1	0
N. J.	..	..	..	1	..	..	..	..	1	..	..	1	1	2
N. Y.	1	..	..	..	..	1	1	..	2	2	1	..	5	3
N. D.	..	..	..	1	1	..	..	2	1	..	1	..	3	3
Ohio	4	..	..	1	..	3	..	1	..	2	1	..	5	7
Okla.	..	..	2	4	1	..	1	3	2	2	2	2	8	11
Or.	3	2	2	3	..	..	..	3	..	2	..	..	5	10
Pa.	..	..	..	..	..	2	2	..	..	3	2	2	4	7
S. D.	..	..	1	..	2	..	..	..	..	..	..	1	3	1
Tenn.	2	..	*19*	2	4	..	6	..	3	..	1	..	*35*	2
Tex.	2	8	*33*	7	2	..	6	5	3	3	2	3	*48*	26
Utah	1	1	..	2	..	..	1	..	1	..	..	..	3	3
Vt.	..	..	..	..	..	..	1	1	..	..	1	..	2	1
Va.	..	1	2	2	..	..	..	..	1	..	..	1	3	4
Wash.	1	1	7	7	..	..	..	7	..	..	..	2	8	17
W. Va.	..	..	..	..	..	1	..	..	..	..	..	..	0	1
Wis.	1	..	2	3	1	2	4	8	7	4	8	10	23	27
Wyo.	..	..	..	..	..	..	..	1	..	..	..	..	0	1
Totals	25	24	106	66	34	33	42	48	50	40	49	44	306	255

POPULATION: 306 communities "For" 2,059,371
255 communities "Against" 6,985,798

whereas publicly owned plants served 9.9 per cent—these figures as of January 1, 1939. In view of the fact that there were more municipal plants than private companies engaged in such service, the total number of private companies is clearly not comparable with the total number of municipal plants on the basis of determining the relative importance of their respective utility operations.

It will be observed in the accompanying list of municipal elections (page 298) the name of the same municipality is, in a few instances, listed two and even three times. This occurs, of course, where more than one election was held,

such as in the case of Ogden, Utah, where municipal ownership proposals were voted down three times within two years. It was necessary to repeat the entry in such cases so as to give the result of each individual election (rather than, for example, to cancel out an unfavorable election against a subsequent favorable election on a municipal ownership proposal) in order to record the trend in sentiment year by year. To do otherwise would distort the results shown on the accompanying charts which purport to denote the year-by-year developments in public ownership sentiment.

However, such duplicate entries are recorded "in favor" as well as "against" and probably would not substantially alter the comparative result one way or the other under a different treatment.

—GEORGE E. DOYING

List of Municipalities Voting on Public Ownership Of Local Electric Utilities, 1934-1939 (Inc.)

NAMES of the following municipalities voting *unfavorably* on local public ownership properties appear in *italics*. Municipalities voting favorably appear in roman type. The year of the respective election is indicated by the bracketed numerals; population of each community is given in adjoining column.

Name	*Population*
ALABAMA	
Athens ('34)	4,238
Enterprise ('34)	3,702
Fairfield ('36)	11,059
Albertville ('37)	*2,716*
Ft. Payne ('37)	*3,375*
Scottsboro ('37)	*2,304*
Attalla ('34)	*4,585*
Haleyville ('37)	*2,115*
ARKANSAS	
Paragould ('38)	5,966
Harrison ('35)	*3,626*
CALIFORNIA	
Sacramento ('34)	93,750
Weaverville ('34)	878
Lodi ('35)	6,788
Lodi ('34)	*6,788*
Lodi ('34)	*6,788*
San Joaquin Dist. ('35)	*12,000*
Susanville ('35)	*1,358*
Lynwood ('36)	*7,323*
Napa ('36)	*6,437*
Tulare ('36)	*6,207*
Fresno ('37)	*52,513*
Oroville ('37)	*3,698*
Redwood City ('37)	*8,962*
San Diego ('37)	*147,995*
San Francisco ('37)	*634,394*
Tulare ('37)	*6,207*
San Francisco ('39)	*634,394*
Ventura ('39)	*11,603*
COLORADO	
La Salle ('34)	564
Delta ('35)	2,938
Fort Collins ('35)	11,489
La Junta ('38)	7,193
Rifle ('34)	*1,300*
Englewood ('37)	*7,980*
Craig ('38)	*1,418*
Glenwood Springs ('38)	*1,825*
Glenwood Springs ('38)	*1,825*
Montrose ('39)	*3,566*
Montrose ('39)	*3,566*
CONNECTICUT	
Bristol ('38)	28,451
Manchester ('35)	*21,973*
DELAWARE	
Seaford ('35)	2,468
Seaford ('36)	2,468
Middletown ('38)	1,247
FLORIDA	
De Land ('36)	5,246
Arcadia ('38)	4,082
Arcadia ('38)	4,082
Mt. Dora ('35)	*1,613*
De Land ('37)	*5,246*
Palatka ('38)	*6,500*
Melbourne ('39)	*2,677*
GEORGIA	
Powder Springs ('34)	342
IDAHO	
Sandpoint ('36)	3,290
ILLINOIS	
Kewanee ('34)	17,093
Centralia ('35)	12,583
La Salle ('35)	13,149
Wood River ('35)	8,136
Jacksonville ('36)	17,747

ILLINOIS, *Cont'd*

Name	Population
La Salle ('37)	13,149
Bushnell ('38)	2,850
Chester ('34)	*3,922*
Murphysboro ('34)	*8,182*
Urbana ('34)	*13,060*
Waukegan ('34)	*33,499*
Aledo ('35)	*2,203*
Petersburg ('36)	*2,319*
Herrin ('38)	*9,708*

INDIANA

Lapel ('34)	1,140
Morristown ('34)	608
Boonville ('35)	4,208
Lebanon ('37)	6,445
Rising Sun ('39)	1,379
Noblesville ('34)	*4,811*

IOWA

Coon Rapids ('34)	1,303
Exira ('34)	937
Iowa City ('34)	15,340
Lamoni ('34)	1,739
Milford ('34)	1,062
Readlyn ('34)	385
Readlyn ('34)	385
Rockford ('34)	996
Sumner ('34)	1,561
Fairfield ('35)	6,619
Hopkinton ('35)	758
Iowa City ('35)	15,340
La Porte ('35)	1,470
Sandborn ('35)	1,213
Fontanelle ('36)	833
Forest City ('36)	2,016
New Market ('36)	630
Rockwell City ('36)	2,108
New Market ('37)	630
Manning ('37)	1,187
Primghar ('37)	962
Stanton ('37)	607
Anita ('38)	1,106
Cascade ('38)	1,221
Dayton ('38)	713
Montezuma ('39)	1,257
McGregor ('39)	1,299
Woodbine ('39)	1,348
Brooklyn ('39)	1,345
Bancroft ('39)	854
Albia ('34)	*4,425*
Oskaloosa ('34)	*10,123*
Rembrandt ('34)	*263*
Sheldon ('34)	*3,320*
Boone ('35)	*11,886*
Le Mars ('35)	*4,788*
Sioux City ('35)	*79,183*
Waukon ('35)	*2,526*
Perry ('36)	*5,881*
Rockwell City ('36)	*2,108*
Scranton ('36)	*1,058*
Eldon ('37)	*1,788*
Rolfe ('37)	*1,012*
Storm Lake ('37)	*4,157*
Belmond ('38)	*1,733*
Durant ('38)	*733*
Manly ('38)	*1,447*
Rolfe ('38)	*1,012*
Chariton ('39)	*5,365*

KANSAS

Eureka ('34)	3,698
Burlington ('35)	2,273
Hoisington ('35)	3,001
Phillipsburg ('35)	1,543
Udall ('35)	436
Damar ('37)	250
Goodland ('37)	3,626
Paola ('37)	3,762
Alma ('38)	811
Waterville ('39)	698
Cherryvale ('35)	*4,251*
Dorrance ('35)	*325*
Dunlap ('35)	*273*
Hepler ('35)	*210*
Mankato ('35)	*1,401*
Olathe ('36)	*3,656*
Corning ('36)	*340*
Hamilton ('37)	*549*
Hamlin ('37)	*183*
Oneida ('37)	*224*
Phillipsburg ('37)	*1,543*
Virgil ('37)	*598*
Florence ('38)	*1,493*
Lecompton ('38)	*293*
Olpe ('38)	*317*
Plainville ('38)	*1,058*
Caldwell ('39)	*2,046*

KENTUCKY

Glasgow ('36)	5,042
Middlesboro ('36)	10,350
Owenton ('36)	975
Williamstown ('36)	917
Vanceburg ('37)	1,388
Williamstown ('37)	917
Burkesville ('38)	886
Barbourville ('38)	2,380
Fulton ('38)	3,502
Hickman ('38)	2,321
Owensboro ('38)	22,765
Ft. Thomas ('35)	*10,008*
Williamstown ('35)	*917*
Louisa ('36)	*1,961*
Wilmore ('36)	*1,329*
Barbourville ('37)	*2,380*
Beattyville ('37)	*906*
Irvine ('37)	*3,640*

LOUISIANA

De Quincy ('38)	3,589
Bossier City ('38)	*4,003*

MASSACHUSETTS

Falmouth ('34)	4,821
Falmouth ('35)	4,821
Groton ('34)	*2,434*

MICHIGAN

Ironwood ('34)	14,299
Zeeland ('35)	2,850
Constantine ('36)	1,259
Dowagiac ('36)	5,550
Ludington ('36)	8,898

MICHIGAN, *Cont'd*

Name	*Population*
Zeeland ('37)	2,850
Sturgis ('38)	6,950
Morenci ('34)	*1,773*
Ludington ('36)	*8,898*
Gladstone ('37)	*5,170*
Owosso ('37)	*14,496*
Menominee ('38)	*10,320*
Menominee ('38)	*10,320*
Mt. Pleasant ('38)	*5,211*

MINNESOTA

Fairfax ('34)	916
Glenwood ('34)	2,220
Morris ('34)	2,474
Spring Valley ('34)	1,712
Bemidji ('35)	7,202
Eveleth ('35)	7,484
Hutchinson ('35)	3,406
Morris ('35)	2,474
Lake Crystal ('37)	1,173
Halstad ('38)	535
Kasson ('38)	1,019
Madelia ('38)	1,397
Princeton ('38)	1,636
Truman ('38)	730
Westbrook ('38)	610
Pine River ('39)	422
St. Cloud ('34)	*21,000*
St. Paul ('34)	*271,606*
Hopkins ('35)	*3,834*
Bemidji ('36)	*7,202*
Glencoe ('36)	*1,925*
Kenneth ('37)	*118*
Brainerd ('38)	*10,221*
Glenwood ('38)	*2,220*
Le Center ('38)	*948*
Le Center ('38)	*948*
Northfield ('38)	*4,153*
Northfield ('38)	*4,153*
St. Charles ('38)	*1,311*
Sherburn ('38)	*860*
Eveleth ('39)	*7,484*

MISSISSIPPI

Columbus ('34)	10,743
Corinth ('34)	6,220
Aberdeen ('35)	3,925
Okolona ('35)	2,235
Starkville ('35)	3,612
Ripley ('36)	2,330
Columbus ('37)	10,743
Batesville ('38)	1,062
Grenada ('38)	4,349
Charleston ('39)	2,014
Mendenhall ('34)	*919*
Greenville ('35)	*14,807*
Jackson ('35)	*48,262*
Oxford ('35)	*2,890*

MISSOURI

La Plata ('34)	1,406
Anderson ('35)	857
Pattonsburg ('35)	1,009
Thayer ('36)	1,632
Rockport ('37)	1,162
Carrollton ('38)	4,058

Name	*Population*
Clarksville ('38)	739
Eldorado Springs ('38)	1,917
Lathrop ('38)	940
Odessa ('38)	1,861
Pleasant Hill ('38)	2,330
Vandalia ('38)	2,450
Moberly ('34)	*13,772*
Mound City ('34)	*1,525*
Weston ('34)	*1,021*
Kirksville ('35)	*8,293*
Plattsburg ('36)	*1,672*
Parkville ('37)	*636*
Braymer ('38)	*933*
Centralia ('38)	*2,009*
Lees Summit ('38)	*2,035*
Liberty ('38)	*3,516*
Liberty ('38)	*3,516*
Osceola ('38)	*1,043*
Parkville ('38)	*636*
Sturgeon ('38)	*600*
Caruthersville ('38)	*4,781*

NEBRASKA

Deshler ('34)	1,177
Haigler ('35)	535
Columbus ('36)	6,898
Stromsburg ('36)	1,320
Arnold ('37)	899
Auburn ('37)	3,068
Battle Creek ('37)	755
Minatare ('37)	1,079
Superior ('37)	3,044
Auburn ('38)	3,068
Bayard ('38)	1,559
Cozad ('38)	1,813
Nebraska City ('38)	7,230
York ('38)	5,712
Bayard ('39)	1,559
McCook ('34)	*6,688*
McCook ('36)	*6,688*
Tilden ('36)	*1,106*
Fullerton ('39)	*1,680*

NEVADA

Winnemucca ('34)	1,989

NEW JERSEY

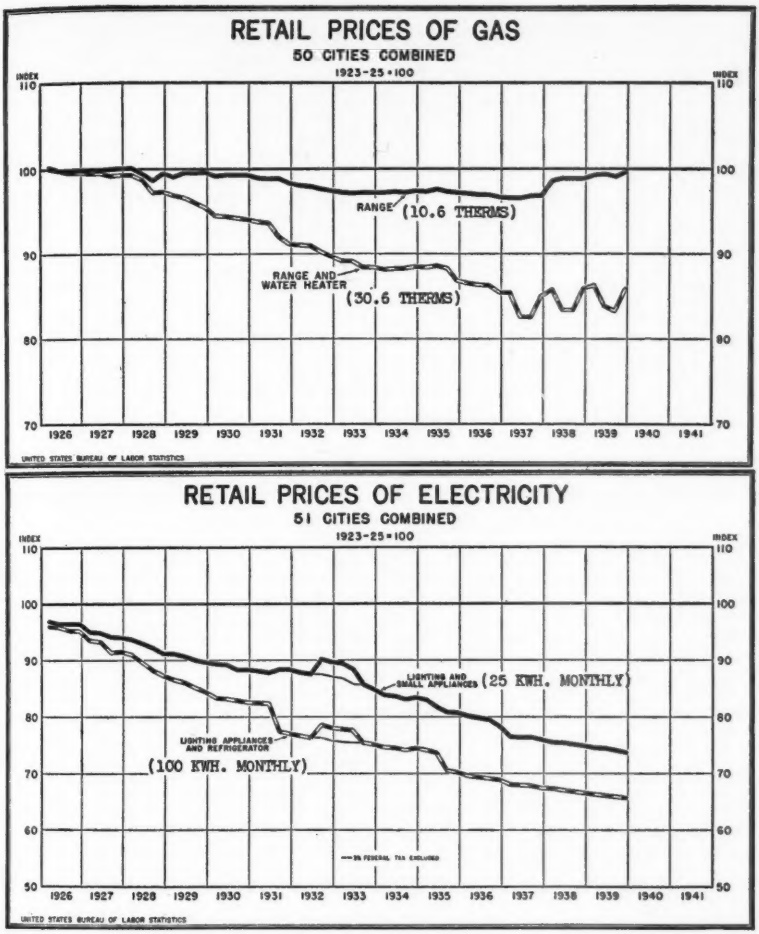
Camden ('35)	118,700
Mt. Olive ('34)	*1,235*
Dover Twp. ('38)	*10,031*

NEW YORK

Watertown ('34)	32,205
Albany ('35)	127,412
New Hyde Park ('35)	3,314
Plattsburg ('36)	13,349
East Rochester ('39)	6,627
Auburn ('35)	*36,652*
Lockport ('35)	*23,160*
Churchville ('37)	*652*

NORTH DAKOTA

Leeds ('34)	725
Grand Forks ('35)	17,112
Walhalla ('37)	700
Grand Forks ('36)	*17,112*
Hettinger ('36)	*1,292*
Sherwood ('38)	*455*



OFFICIAL GAS AND ELECTRIC PRICE TRENDS THROUGH 1939

OHIO

Name	*Population*
Wapakoneta ('34)	5,378
Amherst ('39)	2,844
Monroeville ('39)	1,080
No. Baltimore ('39)	2,402
Chillicothe ('39)	18,340
Lima ('35)	*42,287*
New London ('35)	*1,527*
East Liverpool ('36)	*23,329*
Delphos ('37)	*5,672*
Port Clinton ('37)	*4,408*
Sandusky ('37)	*24,622*
Fairport ('38)	*4,972*

OKLAHOMA

Name	*Population*
Cushing ('34)	9,301
Pawnee ('34)	2,562
Frederick ('35)	4,568
Wynnewood ('35)	1,820
Hooker ('36)	1,628
Hollis ('37)	2,914
Drumright ('38)	4,972
Erick ('38)	2,231
Muskogee ('34)	*32,026*
Norman ('34)	*9,603*
Eufaula ('35)	*2,073*
Pauls Valley ('35)	*4,235*

OKLAHOMA, *Cont'd*

Name	*Population*
Alva ('36)	*5,121*
Konawa ('36)	*2,070*
Vinita ('36)	*4,263*
Carnegie ('38)	*2,063*
Fairfax ('38)	*2,134*
Guthrie ('38)	*9,582*
Hollis ('38)	*2,914*

OREGON

Cascade Locks ('38)	356
Monmouth ('38)	906
Oakridge ('39)	851
Hood River Co. ('39)	8,938
Wasco Co. ('39)	12,646
Springfield ('35)	*2,364*
Linn Co. ('36)	*24,700*
Marion Co. ('36)	*60,541*
7 Counties ('38) (Clackamas, Clatsop, Columbia, Washington, Polk, Yamhill, Lincoln)	*166,448*
Springfield ('38)	*2,364*
Wasco Co. ('38)	*12,646*
Lane Co. ('39)	*54,493*
Linn Co. ('39)	*24,700*

PENNSYLVANIA

Fleetwood ('34)	2,150
Myerstown ('34)	2,593
Fleetwood ('36)	2,150
Girard ('36)	1,554
Bethlehem ('34)	*57,892*
Emaus ('34)	*6,419*
Allentown ('35)	*92,563*
Ellwood City ('35)	*12,323*
New Castle ('35)	*48,674*
Allegheny Co. ('37)	*1,374,310*
Reading ('37)	*111,171*

SOUTH DAKOTA

Flandreau ('37)	1,934
Freeman ('37)	987
Flandreau ('38)	1,934
Rapid City ('34)	*10,404*

TENNESSEE

Memphis ('34)	253,143
Chattanooga ('35)	119,798
Lewisburg ('35)	3,112
Paris ('35)	8,164
Clarksville ('36)	9,242
Columbia ('36)	7,882
Fayetteville ('36)	3,822
Henderson ('36)	1,503
Newbern ('36)	1,621
Newbern ('36)	1,621
Etowah ('37)	4,209
Gallatin ('37)	3,050
Jackson ('37)	22,172
Newbern ('37)	1,621
Alamo ('38)	907
Benton Co. ('38)	11,237
Brownsville ('38)	3,204
Carroll Co. ('38)	26,132
Friendship ('38)	487
Halls ('38)	1,474
Henry Co. ('38)	26,432
Humboldt ('38)	4,613
Lenoir City ('38)	4,470
Maury City ('38)	425
Munford ('38)	376
Obion ('38)	1,100
Ridgely ('38)	979
Sharon ('38)	596
Tiptonville ('38)	1,359
Weakley Co. ('38)	29,262
Whiteville ('38)	692
Portland ('38)	1,030
Savannah ('38)	1,129
Sweetwater ('39)	2,271
Camden ('39)	955
Bells ('38)	*919*
Greeneville ('38)	*5,544*

TEXAS

Bartlett ('34)	1,873
Kenedy ('34)	2,610
Electra ('35)	6,712
Raymondville ('35)	2,050
Stephenville ('35)	3,944
Edcouch ('36)	914
Floydada ('36)	2,637
Leonard ('36)	1,131
Plano ('36)	1,554
Sulphur Springs ('36)	5,417
Yorktown ('36)	1,882
Brenham ('37)	5,974
Weatherford ('37)	4,912
Baird ('38)	1,965
Bastrop ('38)	1,895
Blanco ('38)	719
Burnet ('38)	1,055
Crosbyton ('38)	1,250
Cuero ('38)	4,672
Edna ('38)	1,752
El Campo ('38)	2,034
Electra ('38)	6,712
Elgin ('38)	1,825
Fredericksburg ('38)	2,416
Goldthwaite ('38)	1,324
Gonzales ('38)	3,859
Hempstead ('38)	2,515
Jasper ('38)	3,393
Kermit ('38)	2,000
Kyle ('38)	606
Lampasas ('38)	2,709
Llano ('38)	2,124
Lockhart ('38)	4,367
Luling ('38)	5,970
Manor ('38)	654
Marble Falls ('38)	865
Moulton ('38)	762
Perryton ('38)	2,824
Robstown ('38)	4,183
San Marcos ('38)	5,134
Schulenburg ('38)	1,604
Smithville ('38)	3,296
Somerville ('38)	2,287
Wellington ('38)	3,570
Waelder ('38)	1,048
Wylie ('38)	771
Weimar ('39)	1,256

TEXAS, *Cont'd*

Name	Population
Lexington ('39)	519
Abilene ('34)	*23,175*
Gainesville ('34)	*8,000*
Goose Creek ('34)	*5,208*
Marlin ('35)	*5,338*
San Angelo ('35)	*25,308*
Wichita Falls ('35)	*43,690*
Bay City ('36)	*4,070*
Fairfield ('36)	*712*
Gainesville ('36)	*8,915*
Perryton ('36)	*2,824*
Wichita Falls ('36)	*43,690*
Columbus ('38)	*2,054*
Comanche ('38)	*2,435*
Cuero ('38)	*4,672*
Gainesville ('38)	*8,915*
Goose Creek ('38)	*5,208*
Lancaster ('38)	*1,133*
Pittsburg ('38)	*2,640*
Eagle Lake ('39)	*2,345*
Gainesville ('39)	*8,915*
Hamilton ('39)	*2,084*
Kenedy ('39)	*2,610*
La Grange ('39)	*2,354*
Texarkana ('39)	*16,602*
Temple ('39)	*15,345*

UTAH

Bountiful ('35)	2,571
Provo ('36)	14,766
Provo ('39)	14,766
Ogden ('38)	*40,272*
Ogden ('38)	*40,272*
Ogden ('39)	*40,272*

VERMONT

Rutland ('34)	17,315
Putney ('36)	835
Brattleboro ('36)	*8,709*

VIRGINIA

Danville ('35)	22,247
Galax ('38)	2,544
South Hill ('38)	1,405
Danville ('34)	*22,247*
Covington ('38)	*6,538*
Virgilina ('38)	*338*
Arlington Co ('39)	*50,764*

WASHINGTON

Clark Co. ('38)	40,316
Klickitat Co. ('38)	9,825
Skamania Co. ('38)	2,891
Grays Harbor Co. ('38)	59,982
Thurston Co. ('38)	31,351
San Juan Co. ('38)	3,097
Grant Co. ('38)	5,666
Shelton ('34)	*3,091*
Vancouver District ('34)	*15,766*
Clark Co. ('36)	*40,316*
Columbia Co. ('36)	*5,325*
Skamania Co. ('36)	*2,891*
Walla Walla Co. ('36)	*28,441*
Yakima Co. ('36)	*24,875*
Yakima ('36)	*22,101*
Yakima Co. ('38)	*77,402*
Walla Walla Co. ('38)	*28,441*
Columbia Co. ('38)	*5,325*
Adams Co. ('38)	*7,719*
Island Co. ('38)	*5,369*
King Co. ('38)	*97,934*
Kitsap Co. ('38)	*30,776*
Puyallup ('39)	*7,094*

WISCONSIN

Darlington ('34)	1,764
Hustisford ('34)	537
Mt. Horeb ('34)	1,425
Mt. Horeb ('34)	1,425
Neenah ('34)	9,151
Stoughton ('34)	4,497
Superior ('34)	36,113
Waupaca ('34)	3,131
Ashland ('35)	10,622
Breed ('35)	462
Howe ('35)	821
Maple Valley ('35)	989
Medford ('35)	1,918
Poynette ('35)	672
Suring ('35)	421
Brooklyn ('36)	406
Cambria ('36)	671
Milford ('36)	956
Oregon ('36)	857
Hustisford ('37)	537
Grantsburg ('38)	777
Whitehall ('38)	915
Mt. Horeb ('39)	1,425
Fond du Lac ('34)	*26,449*
Horicon ('34)	*2,214*
Milwaukee ('34)	*578,249*
Peshtigo ('34)	*1,579*
Pittsville ('34)	*508*
Potosi ('34)	*447*
Stevens Point ('34)	*13,623*
Two Rivers ('34)	*10,083*
Two Rivers ('34)	*10,083*
West Salem ('34)	*1,011*
Beaver Dam ('35)	*9,867*
Gillett ('35)	*1,067*
Platteville ('35)	*4,047*
Tomah ('35)	*3,354*
Cameron ('36)	*760*
Delton ('36)	*320*
Elkhart Lake ('36)	*571*
Lincoln Co. ('36)	*21,072*
Marion ('36)	*992*
Milwaukee ('36)	*578,249*
Poynette ('36)	*672*
Sheboygan ('36)	*39,251*
Ft. Atkinson ('37)	*5,793*
Westby ('37)	*1,366*
Plain ('38)	*331*
Superior ('38)	*36,113*
Washburn Co. ('38)	*11,103*

WYOMING

Buffalo ('36)	*1,749*

The March of Events

Bonneville Aids Deals

THE Bonneville Power Administration collaborated with public utility districts in Pacific and Wahkiakum counties this month in purchasing facilities of the West Coast Power Company in southwestern Washington. The acquisition will become effective March 1st, subject to the approval of the Federal Power Commission.

Bonneville acquired about 80 miles of high-voltage transmission lines, a mile of submarine cable across the Columbia, four substations, right-of-way easements, franchises, and other property for slightly more than $150,000.

Wahkiakum County Public Utility District paid $120,000 for one generating plant and distributing lines serving Skamokowa, Cathlamet, and Puget Island. The Pacific PUD bought three generating plants and low-voltage distribution lines around Naselle Junction, Ilwaco, South Bend, and Long Beach for $300,000.

Bonneville agreed to resell for $33,750 a portion of the high-voltage lines purchased from the West Coast to the Pacific PUD.

Cole Oil Control Bill

FIVE additional states have agreed to join in compacts immediately to regulate the conservation and production of natural resources. Governor Leon C. Phillips of Oklahoma, chairman of the oil pact group fighting the Cole oil control bill, disclosed the fact before a subcommittee of the House Interstate Commerce Committee recently. Governor Phillips named the states as Arkansas, Wyoming, Montana, Kentucky, and Mississippi.

The present interstate oil compact was reported to be composed of Oklahoma, Kansas, Texas, New Mexico, Colorado, Michigan, and Illinois. All except Illinois have state oil and gas conservation laws. State leaders are convinced that Secretary of the Interior Harold Ickes is back of the drive.

REA Annual Report

FARM power systems financed by REA are making "a favorable showing" financially and the ultimate losses on loans "should be small," the administrator of rural electrification, Harry Slattery, stated in his annual report to the Congress on February 17th.

The report traced in outline the swift growth in the use of electricity in the United States, and the progress of the coöperative and other farmers' power systems financed by REA during their present development period. It pointed out that sharp reductions in over-all construction costs, such as REA has already achieved in its four and a half years of operation, have operated to keep at a minimum the interest and amortization charges. The report added:

"No less important to the continuing and increasing success of self-liquidating rural power systems is the abundant, and, to the user, profitable use of electric energy."

Japan Hit by Power Restrictions

JAPAN'S giant industrial machine slowed virtually to a snail's pace early this month following enforcement of drastic new restrictions on electric power consumption. The latest curtailment at that time, the fifth in five months because of an acute power shortage, was ordered for an additional ten days in 14 prefectures, of which Osaka, Japan's chief manufacturing center, is the key point. Other principal industrialized areas affected included Kobe and Kyoto.

Additional restrictions were effective in Yokohama February 10th. Tokyo was also expected to be placed under the new restrictions, both cities facing a 35 per cent cut.

The output of textiles, fertilizers, foodstuffs, and beer was reduced sharply, although utilities, wartime industries, and factories where stoppage would be dangerous continued normal operations.

Arkansas

"Little TVA" Favored

ESTABLISHMENT of an Arkansas River Authority, or "Little TVA," with which to force electric rates to a "fair level" in the state was advocated in a statement issued by Lieutenant Governor Bob Bailey recently. The lieutenant governor, serving as state executive

in the absence from the state of Governor Carl E. Bailey, said he would ask the Arkansas congressional delegation to apply for Federal assistance.

He stated that in view of the report of counsel for the Federal Power Commission on February 3rd, in which he recommended that a Federal agency take over from the Arkansas Power & Light Company and develop Blakely dam on the Ouachita river, "it looks like we could expect to get the movement started during this session of Congress."

Frequently comparing rates of private utilities with those of the Tennessee Valley Authority in Tennessee, Mississippi, and Alabama, the acting governor contended that an ARA could build dams for flood-control and power purposes, and sell power to private utilities, but that there "should be a ceiling to resale rates that would allow the utilities to earn only reasonable compensation for services." Mr. Bailey's formal statement said:

"In view of the fact that Arkansas possesses more navigable streams and rivers than any other state, it is appalling to learn that only seven states have power rates that exceed ours. Our citizens must demand a feasible utilities program that will meet our needs and serve as an inducement rather than a hindrance to new industries that wish to locate in Arkansas."

Rehearing Denied

THE state utilities commission on February 5th denied without comment a petition of the Arkansas Louisiana Gas Company for a rehearing of the commission's December 23rd order authorizing the Louisiana-Nevada Transit Company of Ada, Okla., to enter southwest Arkansas as a competitor in the gas distribution field.

The Louisiana-Nevada Company is engaged in building a $440,000 pipe line from north Louisiana to serve the Ideal Cement Company at Okay, Howard county, the Hope Brick Works, and the Hope Light & Power Company's generating plant for 10 cents per thousand cubic feet.

The Arkansas Louisiana Gas Company contended loss of revenue from the industrial concerns would necessitate an upward adjustment in its rates to other customers.

Receives Purchase Advice

HARRISON voters should be given an opportunity to ratify or reject recent action of the city council in voting to acquire the Harrison properties of the Arkansas Power & Light Company, before the state utilities commission establishes a valuation on the property, State Attorney General Jack Holt held late last month.

He said, if the voters approve, the state commission could fix a valuation from which either the city or the utility company could appeal to the courts. If no appeal is taken, the city either may acquire the property at the price fixed or it may refuse to purchase.

The opinion went to Chairman Thomas Fitzhugh of the state utilities commission, who recently advised Mayor L. C. Holt of Harrison that an election should be held before the commission accepted jurisdiction to determine the value of the properties.

California

Rate Reduction Announced

PRESIDENT Ray L. Riley of the state railroad commission recently announced a reduction in rates of the Southern California Edison Company of $1,000,000 annnually, effective March 1st.

The reduction in electric rates resulted from an investigation of the utility's operation by the staff of the state commission during the last several months. Mr. Riley said:

"This substantial saving to customers of Southern California Edison Company follows the commission's declared policy of continuous investigation under which the operations of California's utilities are under constant surveillance. Throughout the investigation the representatives of the company participated. During the course of the commission's study a number of conferences and open meetings were held before Commissioners Ray C. Wakefield and Justus F. Craemer in every section served by the company to acquaint representatives of municipalities and other interested groups with the commission's investigation and to discuss the company's rates and service."

Southern California Edison serves approximately 200 municipalities in the counties of Los Angeles, Ventura, Santa Barbara, San Bernardino, Kings, Tulare, Kern, and Orange.

Central Valley Tabled

THE administration-sponsored Central Valley legislation, proposing to "unfreeze" $50,000,000 of the $170,000,000 bond issue, was introduced on February 2nd by Senator J. C. Garrison, of Modesto, Democrat; R. R. Cunningham, of Hanford, Democrat; and Roy J. Nielsen, of Sacramento, Republican. Committees of both houses, however, apparently killed the bill for the session.

Governor Olson, in his recent message to the state legislature, stated:

"By the narrow margin of two votes you

failed to pass amendments proposed at your regular session last year to the Central Valley Authority Act which would enable California to keep faith with the Federal government and perform its duty to the people in the development of the Central Valley project.

"I have considered carefully whether such legislation could be further delayed until the next regular session, without injury to the public interest and without ignoring requests received from the Federal administration. I am convinced that cannot be done and that need for this legislation is so urgent that it would be a dereliction of duty on my part if I failed to include it in the subjects submitted for your consideration.

"The Federal government will surely complete this project if California will do the things needed to be done and give the people its full benefit in the delivery to them, at the lowest possible cost, of the water and power from this project. That objective can only be obtained through public distribution. Providing the means for public distribution of the water and power from the Central Valley project should go hand in hand with the construction of the project, if the people are to realize the full benefits of both the water and the power furnished by this project."

Proposed expenditure of $50,000,000 on power in connection with the Central Valley water project, either through transfer of existing bonds or a bond issue, was opposed on February 4th in a resolution adopted by the board of directors of the Kern County Farm Bureau.

The directors were on record as favoring the use of the original $170,000,000 authorization for irrigation and flood-control purposes only, pointing out that actual cost of a power distribution system probably will amount to $200,000,000. Copies of the resolution were sent to Governor Olson, State Senator Wagy, and Assemblyman Turner.

Senate Passes Parley Bill

THE state senate on February 7th passed the bill of Senator Ed Fletcher, San Diego Republican, authorizing the state's Colorado River Commission to open discussions with other states of the compact with reference to allocation of water and power.

Rate Parley Ordered

ORDERING the California Farm Federation and the Southern California Edison Company to meet in conference for adjustment of asserted errors in electric rates which have been protested by farmers, the state railroad commission on February 8th adjourned the hearing.

B. F. Woodard, attorney for the electric company, said that "overenthusiasm of some salesmen" has been responsible for some farmers believing domestic rates should not only be low for household use, but also for incubators and brooders.

Offering to buy back all electric stoves and heaters farmers bought to obtain domestic rates for homes and kitchens, Harry Bauer, president of the Edison Company, said they were mistaken in their belief the rate also applied to incubators. J. J. Deuel of the farm group said Bauer's offer was fair, but it would not be the solution because it would entail costly rewiring.

Illinois

To Appeal Gas Rate Plea

THE Peoples Gas Light & Coke Company will carry its request for a gas rate increase amounting to $3,000,000 a year to the United States Supreme Court. This was announced on February 7th by George A. Ranney, chairman, after the Illinois Supreme Court had denied the company's petition for a rehearing of the case. It was the third time the state court had ruled against the company.

Ranney said the state supreme court would be asked to stay its latest mandate until the U. S. Supreme Court makes a decision, and to continue the present gas rates in effect. The money received will be impounded, as has been done the last two years since the increase was first made, Ranney said. If the U. S. Supreme Court rules against the company or refuses to hear the case, more than $6,000,000 will be refunded to Chicago gas users.

Kentucky

Utility Faces Investigations

THE Louisville Gas & Electric Company on February 8th was involved in probes into its activities by Federal and state authorities as the state legislature was asked to grant the city of Louisville power to purchase the utility.

In Washington the Federal Power Commission ordered the Louisville utility to show cause March 11th why the Federal court should not be asked to force the company to

give an accounting of its business activities. T. B. Wilson, president of the company, said "we have been filing information with the Federal Power Commission right along as fast as we can compile it. We haven't refused to file anything."

Representative Leon J. Shaikun, Democrat of Louisville, at Frankfort introduced a bill in the state legislature to give Louisville the right to buy the utility and operate it. Shaikun's bill would authorize the city to contract for TVA power.

The measure, which was drafted by Dr. John Bauer, the electric rate consultant, permits a city of the first class, which denotes Louisville exclusively, to acquire any utility subject to divestment under the Public Utility Holding Company Act. Purchase may be made by negotiation or through condemnation proceedings.

The city has been in dispute with the company for sometime with respect to rates. In addition, Louisville recently started action to break a franchise which, the company holds, is perpetual. If the property is taken over the purchase will be financed through the sale of revenue bonds. Operating income of the properties would be pledged so that bond service would not be charged against general revenues. The maximum interest rate will be 6 per cent, while retirement in forty years is contemplated, it was said.

The state commission on February 9th announced that it had concluded its rate negotiations with the Louisville Gas & Electric Company and that the company had been ordered to file revised rate schedules for its gas and electric service designed to reduce its customer's bills in the net amount of $325,000 a year.

The commission also announced that its personnel would continue its study of the company's plant and properties which was commenced in October, 1938.

Utilities Slash Rates

AN annual rate reduction of $180,781 to customers of the Kentucky Utilities Company and its affiliate, the Kentucky Light & Power Company, was announced on February 8th by the state public service commission. The new rates are effective March 1st.

R. M. Watt, president of the two concerns at Lexington, also announced a $5,420,000 3-year construction program and an employee retirement pension plan.

The rate reduction applies to residential, small commercial, and municipal street lighting consumers.

The commission said definite rates had not been worked out and that it could not say how many of the 87,000 customers of the two concerns would be affected. The commission said the reduction meant a drop of 6 per cent in the companies' income.

Louisiana

Instalment Plan Announced

RESIDENTS of New Orleans whose gas bills are excessive this month because of the cold wave during January will be permitted to pay them over a period of four months, Mayor Robert S. Maestri said recently after a conference with A. B. Paterson, president of the New Orleans Public Service, Inc.

Penalties customary on delinquent bills will not be collected, it was said, but to the contrary, the usual discount would be allowed if the bill and first instalment are paid within the discount period listed on the face of the bill.

The announcement followed by several days the action of the sewerage and water board which, at the mayor's request, said that excessive water bills occasioned by broken water pipes or leakage to prevent freezing would be adjusted on the basis of the same period in 1939.

Mississippi

Gas Rate Boost Proposal

JACKSON'S city commission recently announced a special election would be held "at an early date" to determine if local citizens will approve a more than 100 per cent increase in gas rates made effective by the Mississippi Power & Light Company.

Simultaneously, a "vigorous" protest against the new rates was filed with the Federal Power Commission, and suspension of the rate schedule asked pending a hearing.

The increase, from a present basic price of 27 cents per thousand cubic feet to a scale ranging from $1 per month for the first 400 cubic feet to 50 cents per thousand for all gas used in excess of 12,000 feet, was made necessary by depletion of supply in the Jackson natural fields, the power company said.

The city commission based its protest on the contention the public utility company, under a franchise voted by Jackson people ten years ago, is bound to furnish Jackson consumers gas at the present rate "so long as

there is a sufficient supply within a 40-mile radius." The commission contended such a sufficient supply was available should the "blowing" of Jackson field gas to other state and out-of-state points be discontinued by the company.

Nebraska

Power Districts Report

THE North Loup Public Power District, Ord, filed with the governor an audit of operations for the period of 1939 which showed an operating surplus of $15,868 exclusive of adjustment of electric purchases for 1939 and bond interest. The auditors' statement said the district can pay all 1939 obligations with the exception of bond interest, and have a surplus of $10,000.

The district had bonds in amount of $916,000 outstanding, on which there is accrued interest of $30,533. It received a PWA grant of $699,000.

The Thayer County Rural Public Power District also filed its annual statement which showed that $173,538 was due as an allotment from the REA, and that it had received a working capital allotment of $3,318. The district's only liability was said to be a note and mortgage in amount of $182,000 given to REA

New York

Utility Tax Scored

THE state public service commission, in an order granting the Rochester Gas & Electric Corporation the right to make a $408,000 increase in its rates, recently assailed high utility taxes as the "predominant cause" for increased service costs. Under the present law the state puts a 2½ per cent tax on the gross incomes of utility companies. Municipalities also have the power, if they so desire, to levy an additional 1 per cent utility tax.

A decision handed down by Commissioner Maurice C. Burritt gave the company the power to raise its rates in order to meet a deficit of $408,000. The order for the rate increase was unanimously adopted by the commission. (See p. 289.)

Seaway Study Demanded

SWINGING into the campaign to defeat the St. Lawrence seaway-power project, Senator Walter J. Mahoney, Buffalo Republican, announced recently that he would propose in the state legislature that a searching economic survey of the probable effects of the project on New York state be conducted by a bipartisan committee of the senate and assembly.

Mahoney's resolution would provide for calling upon the President and Congress of the United States to defer any action in reference to the proposed treaty with Canada relative to the St. Lawrence seaway until such investigation has been concluded, on the ground that New York, of all states in the Union, will be most vitally affected and most heavily surcharged with its cost.

Mahoney said he would request Assemblyman Anthony J. Canney, Buffalo Democrat, to sponsor the companion resolution in the lower house.

This development came swiftly on the heels of receipt on February 6th by Erie county and western New York legislators of a letter from the Niagara Frontier Planning Board of Erie and Niagara counties attacking the St. Lawrence project and suggesting that treaty approval should be sidetracked until an unprejudiced legislative group had investigated the effects of the plan on industry and commerce of the state.

The Niagara Frontier Planning Board has been designated the official agency of Buffalo, Erie county, and Niagara county for waging the drive to block the St. Lawrence project. City and county appropriations have been voted the board as a "fighting purse."

Ohio

City Light Probe Approved

THE Cleveland city council's utilities committee on February 9th approved legislation empowering that committee to investigate construction of the new generating plant of the municipal light and power system, and to invite the Public Works Administration, which is paying 45 per cent of the cost of the project, to make its own independent inquiry.

Before reporting out the legislation, by Councilman James S. Hudec, Republican, for action by the council, the committee turned down a proposal by Councilman William C.

Reed, Democrat, that the Federal Bureau of Investigation, as well as the PWA, be asked to join in the inquiry.

The committee indicated one of its first moves would be to make a thorough inquiry into the question why no city building permit for the project, which was started early last year, was obtained until recently.

Oklahoma

GRDA Chief Appointed

T. P. CLONTS, city manager of Muskogee, was appointed manager of the Grand River Dam Authority on February 8th, replacing R. V. L. Wright, who resigned several months ago due to differences with members of the Authority. The announcement was made in Washington by John M. Carmody, Public Works Administrator. The appointment was concurred in by the Authority, meeting at Vinita.

The salary of the new manager will be $10,000 a year. Wright was paid $15,000. It was understood Clonts would have no contract or definite tenure of office. The Authority wired Washington officials they thought "no contract for a definite period is desirable; his accomplishments and ability should determine his term of office."

The Public Works Administration recently found T. E. Thompson, Shawnee, Okla., not qualified for managership of the Grand River dam hydroelectric project. The PWA announced the disqualification was made on technical grounds and did not reflect on Thompson's ability.

The rejection was the second for GRDA nominations. The PWA previously had ruled out Ray McNaughton, Miami, Okla., chairman of the Authority.

The GRDA was recently assured coöperation in preliminary negotiations for purchase of transmission lines owned by the Public Service Company of Oklahoma in a 10-county area of northwestern Oklahoma. The GRDA last month approved construction of a power line to Chelsea and Claremore at an estimated cost of $175,430.

Suit against United States Fails

THE U. S. Supreme Court, by an even division of its membership, refused on February 12th to accept the original suit brought by the state of Oklahoma to restrain construction of the Red river dam by the Secretary of War. Justice Murphy was not a member of the court at the time the case was argued and because of his recent elevation there was a possibility a rehearing might be granted.

Oklahoma had bolstered its arguments by filing a supplemental brief in the U. S. Supreme Court contending "there is no such thing as the incidental creation of commercial water power by a flood-control project."

Attorney General Robert H. Jackson, in closing oral argument for the Federal government late last month, asserted that water power would automatically be created by the giant Denison, Tex., project and the sole question was whether it should be "permitted to run to waste."

Mac Q. Williamson, Oklahoma attorney general, replied in his supplemental pleading that such a contention was a "complete misconception" of the nature of a flood-control project.

"If a power project is provided in connection with a flood-control project, it must be purposely and separately created at the expense of the utilization for flood control of the part of the site occupied by the power project," he argued.

While not arguing the government's right to control the floods of streams, Williamson reiterated his belief that "the inseverable power project included in that scheme is so plainly beyond Federal constitutional authority that the whole scheme would fall."

Oregon

Dismissal of Complaint Asked

DISMISSAL of the complaint filed recently in the public utilities commission at Salem, demanding that the Portland General Electric Company and the Northwestern Electric Company immediately reduce their commercial electric rates 50 per cent, was urged in an answer received from Northwestern Electric on February 8th.

The original complaint was filed by C. A. Lucas, Flavel W. Temple, and William F. Woodward, all of Portland.

The complaint charged that the electric companies were purchasing Bonneville energy as low as one-fourth of one cent per kilowatt hour and that there was no reason why the commercial rates should not be reduced immediately instead of waiting for completion of surveys ordered by the public utilities commissioner.

The Northwestern Electric Company's reply set out that the surveys ordered by the utilities commission were now in progress and would be completed shortly. The utilities commissioner previously announced that an

order fixing the reduced commercial and industrial power schedules would be issued prior to May 1, 1940.

Votes Municipal System

THE Philomath city council recently voted to sponsor a movement to secure and operate its own municipal electric system, using Bonneville power.

The action was taken following a vote of the council eliminating all further consideration of Philomath joining the proposed PUD for Benton county, which would comprise all of the eastern part of the county, with the exception of the city of Corvallis.

It was said an effort would be made to secure a vote on the proposal at the May primary. It is proposed to pay for the system by issuing revenue bonds.

Power Line Held Right

THE state of Oregon, through the state highway commission, has authority to grant the Bonneville Administration perpetual right and privilege to construct and maintain power transmission lines over and across specified state highways, Attorney General I. H. Van Winkle held recently.

Van Winkle said the proposed agreement grants no right or privilege to construct any fixture upon or along a right of way of a state highway, but only authorizes construction and maintenance of transmission lines over and across such right of way.

Pennsylvania

PUC Reduces Rates

AN additional $36,000 annual rate reduction ordered by the state public utility commission on February 9th will lower Erie Lighting Company rates for 1940 by $82,000.

A provision in the utility's tariff, effective January 1, 1940, cuts revenues by $46,000 a year. It was later agreed to further reduce rates by $36,000. The PUC order formally approved the company's willingness to make the latter reduction.

The majority of the utility's customers are in Erie county.

Rate Increase Voted Down

A NEW gas rate schedule, which would have increased rates to an estimated $1,300,000 a year for consumers in western Pennsylvania, was voted down by a 3-to-2 decision of the 5-man state public utility commission on February 14th.

The motion, denying Peoples Natural Gas Company, of Pittsburgh, the right to put its new rates into effect on February 16th, was passed when the three Democratic members of the commission overrode the two Republican members.

South Carolina

Seek Board Abolition

SENATOR George McKown, of Cherokee county, announced recently that he would introduce in the state senate a bill to abolish the present board of directors for the Santee-Cooper project and replace the board with one elected by the general assembly. Under the law as it now stands, these directors are appointed by the governor of the state.

McKown's bill, the draft of which was completed early this month, has this title: "A bill to abolish the board of directors of the South Carolina Public Service Authority; to provide for the election of a new board." (The public service authority is the state agency charged with administering the $40,000,000 Santee-Cooper hydroelectric and navigation project now under construction in the lower part of the state.)

Tennessee

Towns Take Over Plants

NEWPORT and Sevierville began operating their own electric distribution systems recently after taking over properties from the Tennessee Valley Authority. The properties had been operated by the Authority since September, 1938, when the TVA and city of Knoxville purchased TEPCO's electric system.

The Authority said Newport paid $220,700 for facilities serving 1,285 customers in Newport, Rankin, and Parrotsville and adjacent rural territory. Sevierville paid the Authority $145,200 for facilities serving about 1,000 customers in Sevierville, Gatlinburg, Pigeon Forge, and adjacent areas.

Not to Sell Appliances

THE Nashville Electric Service will not engage in the sale of major electrical appliances during 1940, it was decided recently by unanimous vote of the Nashville Power Board at a special called meeting.

On motion of J. C. Bradford, seconded by Martin Haves, the board decided that local electrical appliance dealers were entitled to a definite period of time to determine whether or not they could meet sales quotas on heavy appliances. Hayes, in seconding the motion, stated that in his opinion the appliance dealers who have urged NES to stay out of the appliance field have been "shown every consideration and it is now up to them to prove their claims that they can sell the appliances up to the quotas to be decided on."

Seek TEPCO Tax Replacement

THE plight of four Tennessee counties hard hit by the tax loss suffered as a result of the purchase of the TEPCO by the TVA was dramatically portrayed before the House Military Affairs Committee recently by the county officials at the hearing on the Norris-Sparkman Bill to replace tax losses.

Representatives from Warren, White, Van Buren, and Bledsoe counties appeared before the committee pleading that Congress enact the TVA tax replacement measure and predicting that unless some legislation along this line is passed the schools of these counties will have to close and "chaotic" conditions will prevail.

In contrast to the antagonism displayed by many of the committee members towards the tax replacement bill during the testimony earlier in the hearing of W. R. Pouder, executive secretary, and other officers of the Tennessee Taxpayers' Association, the presentation made by the county officials appeared to be received more sympathetically.

Warren county's case was presented by Judge P. N. Moffitt, who testified that of the total valuation of assessed property in the county, which amounted to $6,408,073 before the TVA purchased the TEPCO, $2,666,985 was TEPCO property.

Judge E. D. Austin of White county told the committee that two dams and hydroelectric plants, together with most of the transmission lines in his county, were purchased from the TEPCO by the TVA. The total indebtedness of the county, he said, was $302,348.09, practically all of which was contracted after the building of the dams and transmission lines by the TEPCO, and in anticipation of revenue therefrom and before the loss was foreseen, "and the county can turn to no other source of revenue except real estate to recoup this loss." Being an agricultural county, he said, "at least 75 per cent of the burden will fall on the farmers, very few of whom have electric service available."

County Chairman Grover C. Ault of Bledsoe county, told the committee that in his county it was "a matter of life and death" as to whether or not this replacement of taxes is provided, asserting that the sale of the TEPCO resulted in a tax loss to that county of $18,000.

Utah

Valuation Ordered Cut

THE Mountain Fuel Supply Company was ordered recently by the state public service commission to eliminate from its valuation used as a rate base an asserted write-up of $3,090,834.62 in the plant account of the producing division of the company.

The commission said the write-up resulted from the issuance of capital stock of Western Public Service Corporation in 1929 in an amount in excess of the actual investment in properties acquired at that time. This is one of the companies that was merged in 1935 to form the Mountain Fuel Supply Company, which supplies natural and manufactured gas in a number of Utah communities.

Under the law a public utility is entitled to a fair return on its investment used and usable in providing its particular type of service. Therefore, a higher valuation would justify higher rates, and vice versa.

Although the commission found that this more than $3,000,000 item had no place in the rate base of the company, it did not find sufficient justification at this time for any rate reductions. The commission indicated, however, that further study of the company's rate schedules was necessary "to determine if any one rate is unreasonable or discriminatory when compared with the other rates on file."

Certificate Granted

THE state public service commission recently granted the Utah Power & Light Company a certificate of convenience and necessity authorizing it to continue providing electrical service in the city of Provo.

Provo has refused to renew a city franchise because the city is constructing a municipal power plant and distribution system. The Utah Power & Light Company has agreed to sell Provo its distribution system, with the exception of lines transmitting energy beyond the city limits and to the Utah state hospital.

Among the State Commissions

Miss Florence M. Kiely, the first lady public service commissioner to be appointed in the United States, was reappointed for a full 5-year term beginning February 15, 1940, as a member of the Michigan Public Service Commission. Miss Kiely was first appointed to the commission in April, 1939. On December 12, 1939, another lady commissioner, Mrs. Kathryn Langley began her service as a member of the Kentucky Railroad Commission, a post to which she was elected at the last regular state elections. The first lady commissioner to be elected to office on a state board appears to be Mrs. Mamie Eaton-Greene, who was elected to the Florida Railroad Commission in 1926, and who served until 1934, marrying the telephone commission's engineer in the interim. Another lady commissioner, Mrs. B. J. Pearman, was appointed last year to fill the unexpired term of her deceased husband as a member of the South Carolina Public Service Commission. Miss Kiely is a native of Saginaw, Mich., and was originally appointed by the late Governor Frank D. Fitzgerald. Before that she had served eight years as secretary to the defunct Michigan Public Utilities Commission.

William A. Dittmer, who has been in Honolulu for some months engaged in special work with the Hawaiian Public Utilities Commission, has resigned his post as supervisor of investigation of the Illinois Commerce Commission. During his sojourn in Hawaii, Mr. Dittmer was on extended leave granted by the Illinois commission. He will continue his work with the Hawaiian board.

Last month Governor Keen Johnson of Kentucky reappointed Judge Thomas B. McGregor as a Republican member of the Kentucky Public Service Commission for a term expiring January 2, 1944. Judge McGregor was born near Iola, Ky., in 1881, educated in Bowling Green, and graduated in law from Cumberland University at Lebanon, Tenn., in 1905. After a brief private practice he became assistant attorney general of Kentucky in 1908 and attorney general in 1924. He served as judge of the fourteenth judicial district of Kentucky from 1930 to 1932. He began his service as a public service commissioner in 1936.

On January 9, 1940, the chairman of the Kentucky Public Service Commission, J. C. W. Beckham, died at Louisville at the age of seventy-one years. He had long been active in the political life of Kentucky, which he entered at the age of twenty-four as a state representative. He served as governor and also as U. S. Senator.

Ray L. Riley has been elected president of the California Railroad Commission, succeeding Ray C. Wakefield, who served as president in 1939 and who continues as a member of the commission.

Don G. Abel has been appointed director of the department of public service of the state of Washington to succeed Ferd J. Schaaf, who resigned late last year to enter private consulting practice. Mr. Abel was originally from Kansas, but studied law at the University of Washington from which he graduated in 1919. He served with distinction as an Army officer with the AEF during the World War. He was engaged in general law practice in Chehalis, Wash., until 1936, when he became WPA administrator for the state—a post which he held at the time of his latest appointment.

William Meade Fletcher, nationally known authority on corporation law, was reëlected by the Virginia general assembly for a 6-year term as a member of the corporation commission. Commissioner H. Lester Hooker will be chairman of the Virginia commission for the year 1940.

Frank P. Hyer, assistant chief of the rates and research division of the Wisconsin Public Service Commission, has resigned to accept a position at the Bonneville Federal power project in Oregon. He is the second member of the Wisconsin commission staff to join the Bonneville organization. Barclay J. Sickler, former chief statistician of the Wisconsin board, was the first.

William F. Ehmann, chief of the tariff department of the Wisconsin commission for the last twelve years, and a member of the commission staff for twenty years, also resigned, effective February 15th, to engage in private practice as a tariff consultant. Because of budget reductions, the commission has made no plans to fill any of the three positions made vacant by these resignations.

Examination for secretary of the Wisconsin Public Service Commission was scheduled to be held late in February. The post of secretary has been recreated to replace the former office of commission director, which was abolished. Calmer Browy, former director, remained as acting secretary pending the outcome of the examination.

The Latest Utility Rulings

Supreme Court Refuses to Review Pennsylvania Telephone Company Case

THE United States Supreme Court refused to review a judgment of the supreme court of Pennsylvania affirming a state commission decision on intrastate telephone toll rates. The commission had found that the rates charged for long-distance service in Pennsylvania were higher than the interstate rates for the same facilities for a like or greater distance. This, it was held, constituted an unreasonable discrimination against intrastate patrons.

No question of confiscation was raised and the Supreme Court expressed the view that there was no Federal question involved. The contentions were that the commission order was wholly without support in the evidence and thus constituted a denial of due process contrary to the Fourteenth Amendment; that the order, based on discrimination only, and prescribing rates not found to be reasonable, was arbitrary, and hence a denial of due process; and that the order was a regulation of interstate rates, and imposed a direct burden upon interstate commerce. The court stated:

> As to the first contention, it appears that the state court heard the appeal judicially and decided that there was evidence justifying the finding of the commission of unreasonable discrimination in the transaction of its intrastate business. In the absence of other constitutional objections, it cannot be said that a state court denies due process when on appropriate hearing it determines that there is evidence to sustain a finding of the violation of state law with respect to the conduct of local affairs. The contention that such a decision is erroneous does not present a Federal question.

It was ruled that, where there was no claim of confiscation, the state authority was competent to establish intrastate rates and, in so doing, to decide what constitutes an unreasonable discrimination with respect to intrastate traffic. Since the order related exclusively to intrastate traffic, there was said to be no attempt to regulate interstate rates. *Bell Telephone Co. of Pennsylvania v. Pennsylvania Public Utility Commission.*

Exemption of Holding Companies Denied Under Control Statute

THE Securities and Exchange Commission recently denied applications of two corporations for orders declaring them not to be holding companies entitled to exemption from the provisions of the Public Utility Holding Company Act. The applicants were held to be holding companies within the purview of the Act.

The applicants argued that they were not even *prima facie* holding companies because the stock which they owned and which they had deposited with voting trustees was not owned with the power to vote. As stated by the commission:

> It was urged that the language of § 2 (a) (7) (A)—"holding company means any company which directly or indirectly owns, controls, or holds with power to vote, 10 per cent or more of the outstanding voting securities of a public utility company or of . . . a holding company"—embraces only situations where a company directly or indirectly owns with power to vote, controls with power to vote, or holds with power to

vote, 10 per cent or more of the designated securities.

Regardless of the appropriateness of considering, on an application of this character, whether Byllesby is *prima facie* a holding company, we are convinced that the construction of § 2 (a) (7) (A) for which counsel for the applicants contends, is untenable. The punctuation of that subsection makes it clear that the phrase "with power to vote" qualifies only the word "holds," and not the words "owns" or "controls." While commas appear after the words "owns" and "controls," the word "holds" which immediately precedes the phrase, "with power to vote," is not separated from that phrase by a comma.

The commission said that such application cannot be granted unless it is shown that the applicants do not exercise such a controlling influence over the management or policies of any public utility or holding company as to make it necessary or appropriate in the public interest, or for the protection of investors or consumers, that the applicants be subject to the obligations, duties, and liabilities which are imposed upon holding companies.

The term "controlling influence" was dealt with quite fully. The commission felt that Congress meant by such term something less in the form of influence over the management or policies of the company than control of such company. It was mentioned also that the form in which a controlling influence is exercised is immaterial, the fact rather than the device employed to achieve that end being the important factor. Moreover, the commission said, the existence of a controlling influence is not dependent upon the possession of a majority of the voting stock of a company.

The question whether the creation of a voting trust had destroyed the controlling influence otherwise existing was answered in the negative. The record indicated that in spite of the creation of the voting trust, the applicants continued to retain a controlling influence over the registered holding companies in question.

The applicants felt that, even so, the influence was not such as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that they be held holding companies under the Act. But the absence of arm's-length bargaining forced the commission to hold otherwise.

The commission said that, in passing upon such applications, it can do so only upon the basis of the facts contained in the record before it. Upon that basis it was found necessary to deny the applications. *Re H. M. Byllesby & Co. et al. (File Nos. 31-379, 31-420, Release No. 1882).*

Hearing and Notice in Rate Cases

THE public service commission of Montana conducted a hearing based upon an order compelling a natural gas utility to show cause why its rates should not be reduced, and laid down certain rulings and prescribed a rate schedule in accordance with its opinion.

The utility had urged that it had not been given reasonable notice of hearing and that it had not been duly apprized as to what it was expected to produce in the way of evidence. The motion to dismiss on these grounds was overruled.

The commission agreed that it must give the public and the utility reasonable notice of a hearing to determine the reasonableness of rates, since justice requires that all parties to the proceeding have a reasonable opportunity to prepare and present their respective interests. The commission stated that what constitutes reasonable notice is discretionary with it, provided, of course, that notice is at least given in strict conformity to the statutes.

The commission also held that a notice of such a hearing should apprize the public and the utility as to what is in issue, but, said the commission, such a notice should not contain its views as to what evidence the utility or the public should offer relative to the reasonable-

ness of rates, that being strictly a function for the parties. With respect to this issue the commission said:

> It must always be remembered that the commission is not, strictly speaking, a party to the proceeding but sits as an administrative body to fairly and impartially weigh the evidence and then determine whether or not the rates are reasonable or unreasonable.

The commission stated a well-settled principle when it said that a utility is entitled to earn a fair and reasonable return on the present value of its property used and useful in the public service. That a gas consumer need only pay a reasonable rate has also been decided in earlier cases, the commission said.

The commission had this to say about depreciation:

> In our opinion this utility is not using its depreciation fund for the purpose intended by good accounting practices and as governed by legal principles. To begin with, in order that the property of the utility be properly maintained and that the value upon which the return is based may not be lessened, a utility is, therefore, entitled to earn a reasonable sum for the depreciation of its property. Furthermore, depreciation should always be considered in determining the value of the utility's property for rate-making purposes. However, in so considering depreciation it should be only considered for the purposes for which it is intended and is not to be used as a utility so decides.

A patron of a utility is not required to pay through rates the amount expended by the utility for its plant, the commission decided. It was also held that depreciation should not be permitted to be used for the purpose of paying interest on its bonded indebtedness, but should be used for the purpose intended. *Re Montana-Dakota Utilities Co. (Docket Nos. 3068-3070, Report and Order No. 1752).*

Municipal Right to Fix Rates for Extraterritorial Service

THE supreme court of Arizona reversed a judgment granting a temporary injunction to restrain a municipality from enforcing an ordinance increasing water rates to be paid by consumers outside of the corporate limits. This reversal was based upon the ruling that courts do not have jurisdiction to review the reasonableness or unreasonableness of rates charged by a municipality for water service to such consumers, but only to determine whether the municipality was complying with the terms of its contract. The city was not obliged, as a matter of law, to furnish such service, and the relationship between the parties was purely contractual in nature.

The court, referring to certain rules governing municipal corporations operating public utilities, both within and without their corporate limits, said:

> They may be stated as follows: (a) a municipal corporation has a right to furnish water through its municipal water plant to consumers without, as well as within, its corporate limits; (b) while furnishing water in this manner the state corporation commission has no jurisdiction to regulate its actions towards consumers, whether inside or outside of such limits; (c) the legislature is the only body which has the right to regulate the rates charged by a municipal corporation operating a public utility, and it has plenary power in that respect except as limited by the Constitution; (d) a municipality may not compel consumers outside of its corporate limits to purchase water from it, nor can it be compelled to furnish such water to nonresidents; (e) a municipality can only dispose of its surplus water outside of its corporate limits subject to the prior right of its inhabitants in case of shortage.

It was held that the fact that a business is a public utility, does not make every service performed or rendered by those owning or operating it a public service with its consequent duties and burdens. They may act in a private capacity as distinguished from their public capacity. In so doing, they are subject to the same rules as any private person.

Furthermore, the court said, since the basis of the right of regulation is that a

duty is owed the public, regardless of contract, it follows as a corollary that when the duty which arises is based purely on contract and not on law, express or implied, the situation is governed by the rules applying to private contracts in general, notwithstanding that one of the parties may be operating a public utility. *City of Phoenix et al. v. Kasun et al. 97 P(2d) 210.*

Franchise Held Not Revocable

THE supreme court of Illinois affirmed a judgment for the defendant in a suit by a municipality against a telephone company to recover for use of public streets and alleys for telephone lines, stating that the ordinance under which this action was brought was invalid.

First of all the court stated that when a municipality grants a franchise or license to use the streets for a lawful purpose for an adequate consideration, by an ordinance which is accepted and acted upon by the grantee, the grant is not a mere license, but becomes a contract binding upon the parties, and it cannot be revoked or rescinded except for cause.

Also, the court held, if a franchise or license provides for a definite payment or consideration, the municipality cannot demand additional compensation for the use of its streets.

A grant to a public utility of a right to use public streets, which fixes no definite time for the continuation of the right, is construed, in the absence of anything to show a contrary intention, as a license for the life of the grantee corporation, it was said.

It was further held that a franchise to install telephone poles in the streets, alleys, and public ways of a municipality is assignable when it is given to the grantee, its successors, and assigns. Such a franchise did not create a mere license revocable at the will of the village, but it created a franchise for the remainder of the life of the grantee.

The municipality contended that the dissolution of the grantee, even though subsequent to the assignment of the franchise, terminated the grant. With respect to this, the court said:

> The franchise having been regularly assigned to appellee it would make no difference whether the original grantee or any of the other intervening holders were afterward dissolved. A contrary holding would nullify the provisions in the ordinance which made the franchise assignable.

For the reasons stated the court decided that the ordinance repealing the franchise and levying an annual charge of one dollar per pole for the use of the streets, alleys, and public ways, was invalid. *Village of West City v. Illinois Commercial Telephone Co. 24 NE(2d) 352.*

Election Not Necessary on Purchase by Public Utility District

THE supreme court of Washington upheld the right of Grays Harbor Public Utility District No. 1 to purchase property of Grays Harbor Railway & Light Company without holding an election. This ruling reversed a lower court judgment, which had permanently enjoined the district from executing the purchase contract. The decision affirmed the lower court's ruling that revenue bonds should not be enjoined.

The court found that the commissioners of the utility district had acted in good faith, that no abuse of discretion had been shown, and that a public sale of the bonds was not required by law. In answer to the contention that the purchase could not be made without first

submitting the proposition to the voters, the court said that the conclusion was inescapable that the legislature did not intend to limit the power of commissioners in purchase of utilities, except as to those public utilities owned by a city or town where a general indebtedness was to be incurred which would run the general indebtedness of the district above the 1½ per cent limit.

The contention had also been made that the district had failed to provide and submit to the voters a plan or system. The court said that the provisions relative to the time of passing the plan-or-system resolution were not mandatory.

The city of Aberdeen had intervened on the contention that it had spent more than $125,000 on its own electric utility project and had preëmpted the field. The court, however, said that the city neither owned nor operated a utility for the purpose of furnishing electricity to the inhabitants, and the district was therefore authorized to exercise the right to establish and operate a utility within the city limits. *Bayha v. Grays Harbor Public Utility District No. 1.*

Pennsylvania Full Crew Act Held To Be Unconstitutional

THE supreme court of Pennsylvania upheld a lower court decision that the Full Crew Act of 1937 was unconstitutional as to a railroad which would be required to expend more than $4,500,000 in order to comply with the Act. The court ruled that commission orders making regulations for utilities are void if the cost of compliance is arbitrary and unreasonably oppressive.

The case had been before the supreme court before in 330 Pa 97, 198 A 130. The case had been remanded to the lower court so that facts could be presented. The lower court had held that the sections of the Act involved in this case had no reasonable relation to the safety of employees or passengers, or of the public. The court had held that, in any event, the employment of additional manpower would not obviate, or prevent, suppositional hazards.

The contention had been made that the Act could not be declared unconstitutional as to one member of the class affected, unless declared unconstitutional as to all.

It was held by the court, however, that a statute may operate in an unconstitutional way as to one particular individual or company as to which it may be declared void and yet may as to others still be effective. *Pennsylvania R. Co. v. Driscoll et al. 9 A(2d) 621.*

Local Regulation of Interstate Carrier

A 3-JUDGE Federal court dismissed a complaint, in a suit to restrain city and state officers from interfering with an interstate contract motor carrier's operations and from arresting its drivers, because of lack of jurisdiction and the absence of a substantial Federal question.

The statute under which the officers were acting made it unlawful for contract and common carriers to operate without first obtaining a certificate. It was urged that this statute was unconstitutional because of the enactment of the Federal Motor Carrier Act of 1935. The court held that the statute was not unconstitutional on this ground. Congress had not preëmpted the field by passage of the Motor Carrier Act and the Interstate Commerce Commission had not assumed authority to regulate the interstate operations involved in this particular action.

All parties conceded that state action,

in determining what interstate commerce will or will not benefit the state, constitutes an unconstitutional violation of the commerce clause. But the court stated on the subject:

> However, we not only can but must accept the allegations of the complaint and plaintiff's proffered evidence in determining the propriety of the issuance of an interlocutory injunction. Nowhere in the complaint does it appear that the state commission is refusing or has indicated an intention to refuse to issue a permit on those grounds. Nowhere is it alleged or shown that the state commission has so construed the statute or threatens to do so. The mere susceptibility of a statute to a construction which could render it unconstitutional does not afford sufficient ground for injunctive relief where, as here, it does not appear that the statute has ever been so construed, the enforcing authorities affirm a recognition of its unconstitutionality if so construed and disclaim any intention to do so, and where plaintiff's real ground for relief is not the application of the statute to it.

Finally, it was decided that a contention that the state officers were acting in an unconstitutional manner in arresting drivers because the carrier had failed to secure state certificates and that the purpose of such action was to compel it to secure certificates, with the attendant payment of fees, did not raise the issue of whether the statute under which such officers acted was unconstitutional. It did not give a Federal 3-judge court jurisdiction to enjoin such action where plaintiff had failed to apply for a certificate. The opinion concluded:

> One who is within the terms of a statute, valid upon its face, that requires a license or certificate as a condition precedent to carrying on business, may not complain because of his anticipation of improper or invalid action in administration.

Re Columbia Terminals Co. v. Lambert et al. 30 F Supp 28.

Other Important Rulings

It was held by the supreme court of Indiana that a municipality, in operating an electric plant for the furnishing of light and power for its own use and the use of its inhabitants, does so for a municipal purpose within the meaning of the constitutional provision exempting property used for municipal purposes from tax requirements, and, therefore, the statute exempting such plant from taxation is constitutional. *Chadwick et al. v. City of Crawfordsville, 24 NE(2d) 273.*

The New York Court of Appeals has held that bonds to be issued by a municipality to finance the construction of a power plant constitute an indebtedness of the city and must be included in ascertaining the total amount of indebtedness which the city may lawfully contract under the provisions of the Constitution, where such bonds are to be paid from the general taxes levied upon all the taxable property within the city. *New York State Electric & Gas Corp. v. City of Plattsburg et al. 24 NE(2d) 122.*

The Wisconsin commission, in denying authority to discontinue an agency station and to operate a prepaid non-agency station, held that the revenue derived was merely evidence of the use being made of the service and was not controlling as to whether service should be continued. *Re Illinois Central Railroad Co. (2-R-1054).*

The supreme court of Michigan has held that the construction of an intake crib, pumping and booster stations and pipe line from a certain city to a near-by lake, and new reservoirs, constitutes an extension of the municipality's existing water system rather than the acquisition of a public utility, and, therefore, the city commissioners were authorized to contract for the construction thereof without a vote of the electors of the city. *White et al. v. Welsh et al. 289 NW 279.*

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports.*

PREPRINTED FROM

Public Utilities Reports

COMPRISING THE DECISIONS, ORDERS, AND RECOMMENDATIONS OF COURTS AND COMMISSIONS

VOLUME 31 PUR(NS) NUMBER 5

Points of Special Interest

Titles and Index

TITLES

INDEX

MASSACHUSETTS DEPARTMENT OF PUBLIC UTILITIES

Re Boston, Revere Beach & Lynn Railroad Company

[D.P.U. 5903.]

Service, § 58 — Powers of Commission — Railroad abandonment — Reorganization plan.

1. The Department of Public Utilities has no jurisdiction to authorize a chartered railroad company to abandon all its stations and train stops and discontinue all of its transportation operations, or to approve a plan of reorganization the main purpose of which is to promote the final liquidation of the property, p. 262.

Consolidation, merger, and sale, § 6 — Powers of Commission — Chartered railroads.

2. The Department of Public Utilities lacks authority to approve the sale or transfer of substantially all the property and assets of any railroad operating under a charter of the commonwealth without specific authority from the legislature, p. 262.

Corporations, § 21 — Reorganization plan — Purpose of liquidation.

3. A submitted reorganization plan under § 77B of the Federal Bankruptcy Act is not in the true sense a reorganization plan when its purpose is to promote the final liquidation of the property rather than a change to a more satisfactory form or method of operation, p. 262.

Commissions, § 17 — Jurisdiction — Statutory powers.

4. The Department of Public Utilities, as an agent of the legislative branch, has only such powers as are expressly delegated, and it cannot put forth or claim to exercise inherent or implied powers in the sense that courts sometimes do as essential to the proper functioning of the judicial branch of the government, p. 262.

Consolidation, merger, and sale, § 2 — Right to alienate property — Chartered corporation.

5. The power to alienate property of a public service corporation, such as a railroad organized under a charter of the commonwealth, is not that of the ordinary corporation organized solely for trading and manufacturing purposes, p. 262.

Consolidation, merger, and sale, § 6 — Powers of Commission — Waiver of rights of state.

6. The Department of Public Utilities does not have power, without specific authority, to abrogate or waive reserved rights existing in the commonwealth to acquire, pursuant to charter, the property of an incorporated railroad, p. 262.

Consolidation, merger, and sale, § 13 — Necessity of legislative consent.

7. A railroad operating under a public charter cannot dispose or divest itself of substantially all of its property without the consent of the legislature, p. 262.

Service, § 119 — Duty to serve — Disabling contracts and arrangements.

8. The rule that a chartered railroad company cannot dispose or divest itself of substantially all of its property without legislative consent goes beyond direct conveyances and transfers without legislative authority and places under the ban all contracts and arrangements having a disabling effect upon the ability of a public railroad to perform its public functions, p. 262.

Consolidation, merger, and sale, § 13 — Necessity of legislative consent — Effect of withholding franchise.

9. The prohibition against the alienation of property of a chartered railroad without legislative consent is not limited to franchises only, but any alienation of substantially all property, real and personal, so as to disable a railroad from carrying on the business which it has been chartered to do for the benefit of the public is equally as effective, and it makes no difference whether the transfer is absolute or conditional or to take effect immediately or at some future time, p. 262.

Procedure, § 30 — Findings of fact — Necessity.

10. Requests for findings of fact were denied in view of statutory provisions providing for a review of the rulings of the Department upon questions of substantive law but not contemplating a review of findings of fact, p. 268.

(GRANT, Commissioner, concurs in separate opinion.)

[December 11, 1939.]

PETITION *by intrastate railroad company for authority to abandon all stations and train stops and discontinue all of its transportation operations and for approval of plan of reorganization under § 77B of the Bankruptcy Act; petition dismissed and disapproval of plan certified.*

APPEARANCES: L. C. Goodhue, for petitioners; Henry Wise, for Division 991, American Street Carmen's Union; Fred W. Fisher, for town of Winthrop; Frederick H. Reinstein, for the city of Revere; John H. Backus, representing certain inhabitants of the town of Winthrop; W. Edwin Ulmer, pro se; Herrick, Smith, Donald & Farley (Eugene T. Connolly and James F. Preston, Jr.) for General Bondholders and Bondholders Commission.

WEBBER, Commissioner: Many pertinent facts applicable to this petition for our approval to the abandonment of all passenger service of the petitioner between Lynn, Revere, Winthrop, and Boston, commonly known as the "Narrow Gauge," as well as the debtors' plan of reorganization filed under the provisions of § 77B of the Federal Bankruptcy Act, are fairly well described in the document referred to as the "plan" and in the brief filed by Mr. Fisher, the solicitor for the town of Winthrop. Briefly stated, it appears that the petitioner is a privately operated short line, wholly passenger intrastate railroad, organized under the General Laws and in evidence since 1875, operating by means of a ferry service in Boston

Harbor, between Atlantic avenue in Boston and East Boston, where connections are made with the main line service of the road to its terminal at Lynn by way of Revere. A branch line, also, runs from East Boston serving the town of Winthrop by means of a loop. The entire system in Winthrop is less than 9 miles in length. The wholly owned subsidiary, Point Shirley Street Railway Company, operates busses for the petitioner between Winthrop Beach and Point Shirley and enters this controversy to such a limited extent that further reference herein is not essential. The road operates upon its own right of way and does not use the public streets and highways except at public crossings. In 1928 it changed its method of operation from steam to electricity, the cost of which added approximately $1,500,000 to its indebtedness. The approval of the Department was given in January, 1928 (D. P. U. 3066) (PUR1928B 596), among other things, to the issue of mortgage bonds to the amount of a million dollars, payable January 15, 1933, to provide funds for the electrification of the road. It was then represented to the Department and stated in that opinion that the change from steam to electricity was necessary for efficient operation of the road and could bring about substantial savings in operating expense justifying the additional investment and cost of financing the same. The discussion whether this additional investment was improvident, as claimed at the hearing, is not helpful to the solution of the issues raised by the petition. There is now outstanding $1,000,000 in first mortgage and $1,000,000 in general mortgage bonds. A large part of these bonds is held by Massachusetts savings banks.

In 1928 the road was carrying passengers at the rate of over 12,000,000 a year, with an annual gross revenue of $1,200,000. The number of passengers has since dropped to one-half, while the revenues have fallen as low as $600,000. The causes of this abrupt decline in passenger travel may be ascribed to conditions affecting railway transportation in general, although the absorption of the Chelsea division of the Eastern Massachusetts Street Railway Company by the Boston Elevated in 1936 undoubtedly contributed to the loss of revenues of the Narrow Gauge. Dividends ceased in 1930 and adequate and necessary reserves for depreciation and wear and tear of structures, roadway, and rolling stock have not been maintained because of insufficient passenger income and increased expenses. In 1938, for the first time, an operating deficit of $25,000 was recorded after taxes were paid, and it is expected that this deficit will be increased to over $40,000 for the current year.

The travel between Winthrop and Boston over the loop, so called, it is claimed, has been fairly well maintained during the last ten years, the largest part of the decrease in passenger revenue resulting from the other stations on the main line. Winthrop is a residential seaside suburb of Boston, with a population of 17,000. The development of the town in former days was largely influenced by the location and existence of this railroad. The commercial activities of the town are definitely situated with special relation to the passenger stations of the

road. About a quarter of its population ride daily to work in Boston. While it is claimed its streets are generally narrow and hardly suitable for efficient use of busses, if the railroad goes out of business, and assuming that the town does not enter the Boston Metropolitan District and become a part of the area served by the Boston Elevated Railway System, the town must depend on bus transportation since the cost of adapting the railroad location as a highway for the use of busses is hardly practicable. Transportation by busses from Winthrop, as a distinct service of itself, would require connections with the Boston Elevated Railway System at Orient Heights or Maverick Square at East Boston, besides requiring an additional fare, the amount of which would be governed by the use made of it. Reaching Boston by the ferry is more direct, landing the passenger at Atlantic avenue within easy reach of the business center of Boston, the elevated railway, and the north and south railroad terminals.

The present petition comes before the Department as a result of proceedings for reorganization of the road under § 77B of the Bankruptcy Act, which proceedings were filed in the United States district court for the district of Massachusetts on July 13, 1937. Upon the approval of the petition by the judge, an order was made that the debtor be continued in possession. An order was also issued by said court on October 2, 1939, that the debtor file a copy of the plan of reorganization with this Department with the petition that is now under discussion. The applicable provisions of that act are to be found in § 177 of Art. VIII (11 USCA, §§ 577, 578) as follows:

"SEC. 177. In case a debtor is a public utility corporation, subject to the jurisdiction of a Commission having regulatory jurisdiction over the debtor, a plan shall not be approved, as provided in § 174 of this act, until—

"(1) it shall have been submitted to each such Commission;

"(2) an opportunity shall have been afforded each such Commission to suggest amendments or offer objections to the plan; and

"(3) the judge shall have considered such amendments or objections at a hearing at which such Commission may be heard.

"SEC. 178. In case a debtor is a public utility corporation, wholly intrastate, subject to the jurisdiction of a state Commission having regulatory jurisdiction over such debtor, a plan shall not be approved, as provided in § 174 of this act, unless such state Commission shall have first certified its approval of such plan as to the public interest therein and the fairness thereof. Upon its failure to certify its approval or disapproval within thirty days, or such further time as the court may prescribe, after the submission of the plan to it, as provided in § 177 of this act, the public interest shall, for the purposes of such approval and of the confirmation of the plan, not be deemed to be affected by the plan."

The plan of reorganization, now before that court and approved by committees representing the holders of the first mortgage and general mortgage bonds, and presented for our approval herewith, has in mind the ultimate liquidating of the road and dis-

posing of its property and assets through the trustees of liquidating trusts. The precise request of the petition calls upon the Department to approve in writing the abandonment and discontinuance of all the transportation operations of the road at all the stations and train stops, naming twenty-three in all, and that the Department approve in writing said plan of reorganization and the transfer of all its property used in the operation of the road and other action contemplated thereby (see Art. X).

Chapter 510 of the Acts of 1939 referred to, entitled "An act to provide improved transportation facilities in Winthrop and East Boston and to authorize the inclusion of the town of Winthrop in the Boston Metropolitan District," was enacted during the closing days of the last legislative session. The manifest purpose of Chap. 510 was to afford the town of Winthrop the opportunity to receive the benefits, subject to obligations as defined, of the Boston Elevated Railway System, granting authority of the latter company to acquire, under certain terms and conditions and the approval of the bankruptcy court, certain property of the petitioner now used as a railroad. Section 9 of Chap. 510 provided that the act shall take effect upon its acceptance by the vote of the town of Winthrop and upon acceptance by a majority of the stockholders of the Boston Elevated Railway Company. On October 9, 1939, at a special town meeting of Winthrop, called for the purpose of considering the acceptance of the provisions of Chap. 510 of the Acts of 1939, the act was rejected by a majority vote of its town meeting members, the vote being 134 to 103 against acceptance. To account for the size of the vote controlling the destiny of its 17,000 inhabitants, contrary to the accepted idea of our New England town meetings, where all inhabitants are entitled to vote upon the specific objects included in the town warrant, it should be stated that, because of the acceptance by the town of Acts of 1920, Chap. 427, of the limited town meeting provision permitted under Art. II of the amendment to the state Constitution to towns having a population of over 12,000, the government of the town is confided to town meeting members, so-called in the act, elected annually by the voters and town meeting members at large, consisting of designated officials. These requirements confine the voting membership of the town at town meetings to 300 individuals.

As bearing upon the public safety of continued operation of the road, there was evidence offered on the part of the petitioner that at least $300,000 would be needed to be expended over a period of three years to rehabilitate the road and render it safe for public service, and that there was an immediate necessity requiring expenditures of $70,000. These estimates are much greater than the ideas of the engineering division of the Department as of the date of November 28, 1939. According to that report minimum requirements sufficient to maintain the road in a reasonably safe condition call for the present renewal of 6,700 railroad ties on the main line and 970 on the branch, and that during the year 1940, 6,100 railroad ties on the main line and 1,500 on the branch will be essential, and that, in addition, many

tie joints need attention, such as renewing and tightening. The sum of $8,425 is estimated in the report as the cost of performing work now required on bridges, and the sum of $8,850 for the coming year. To summarize this survey, $17,450 is now needed, and $17,825 for the coming year for that part of the railroad. In addition to the foregoing, a survey of the piers and terminals at Boston and East Boston, used in connection with the ferry service, made by an experienced bridge builder and contractor at the instance of the engineering division, estimates temporary repairs call for an outlay of approximately $3,000, and that further examination would be required to ascertain the condition of the piling and abutments below the water mark, and that the major repairs after six months would call for $30,000 to $35,000.

[1–9] At the outset of the public hearings held upon the petition, counsel for the employees of the road challenged the authority of the Department to grant the requests of the petitioner, by presenting a motion to dismiss. It was argued that the jurisdiction of the Department in railroad abandonment proceedings was defined by § 128 of Chap. 160, and that the Department had no other power to act in the premises. If this view is correct, it is reasonably clear to us, from its phraseology, that the statute in question applies to the occasional station, rather than an entire railroad, because of the requirements in the section itself as to posting notices of intention to abandon, as well as the provision in that and the following § 129 for the relocation of an abandoned station. There is, therefore, a manifest distinction in our mind, voiced in that statute, between curtailment of service and complete cessation of all service of a railroad. Upon no other reasoning, than that authority of the Department in abandonment proceedings is limited to that set in §§ 128 and 129, can we explain the inclusion of § 8 in Chap. 510 of the Acts of 1939, and upon the assumption that statutory authority of the Department is not broad enough to permit the closing of the entire Narrow Gauge Railroad, which would be necessary if Chap. 510 became effective. Section 8 furthermore includes a specific power of disposal of practically all of the property of the railroad, with the approval of the Department; likewise necessary to be exercised, in the acceptance of Chap. 510 by the town of Winthrop, as such acceptance provides for the purchase of the property of the railroad by the trustees of the Boston Elevated Railway Company at a price not exceeding $250,000 (§ 32) and substituting therefor the Boston Elevated Railway System of Transportation to serve the district.

But what appears to create even a more serious doubt than the point argued by counsel for the employees is what seems to us to be our lack of authority to approve the sale or transfer of substantially all the property and assets of any railroad operating under a charter of the commonwealth, without specific authority from the legislature. Such specific authority is to be found in § 8 of Chap. 510, but to be exercised only when the act is accepted by the town of Winthrop, as provided in § 9, and as an incident in the purpose of making the acceptance legally effective. But we do not ap-

pear to have yet reached that point in the history of that act, if we ever do.

The main purpose of this plan of reorganization is the ultimate sale of all the property of the petitioner now used by it in operating its railroad. The right to cease operations is only a step in the main purpose of promoting the final liquidation of the property of the petitioner in such manner as the trustees under the liquidating trusts see fit. The exact language of the trusts is "to convert the property in their hands into cash as rapidly as is consistent with business judgment" (Plan, Art. XI, p. 11).

Before resuming the discussion of the controlling general principle, it is also to be observed that the plan submitted for our approval by the petitioner is not, in our opinion, in the true sense, a reorganization plan. The term reorganization, in the spirit of the radical departure from the general bankruptcy process introduced by § 77B, brings to our minds such thoughts as reconstruction, repair, or cure, and in that sense it seems that advisory coöperation of state regulatory Commissions is necessary to the proper functioning of that statute when public utility corporations are before the court. The office of reorganization, as we interpret that term, is a change to a more satisfactory form or method of operation, and not the ultimate extinction or liquidation, as we view the main purpose of the plan itself, to preserve the business of the debtor by allowing him to continue in possession. Liquidation presumes bankruptcy, and distribution of assets among creditors, and the final chapter of the book.

Returning now to the main discussion, it may be well at this point to attempt to define as briefly as possible the position of this Department in our system of state government. As we are given to understand, we are in a sense an agent of the legislative branch, asserting only such powers as are expressly delegated. We cannot put forth or claim to exercise inherent or implied powers in the sense that courts sometimes do as essential to the proper functioning of the judicial branch of the government. No authority is entrusted to the Department to legislate by formulating broad principles of public policy in the absence of specific authority. If we believe that the law requires change, ample provision is made for recommendations and report to the legislature. Rarely in our experience do we find that matters presented to us do not come within the plain language of some definite legislation applying to the jurisdiction of the Department. Instances indicating the intention of the legislature to withhold the precise power here requested to be exercised, may be found in the statutes referring to the consolidation of railroad companies operating within the commonwealth (§§ 71 to 74 inclusive of Chap. 160) wherein such consolidations are restrained. The power of the Department, it is to be seen, is there limited, after public notice and hearing, *to the making of a report of its findings to the general court,* leaving for the legislature the making of the final decision. The authority vested in the Department to permit the mortgaging and leasing of the railroad is not inconsistent with the general thought, because continued public use of the property used by the public is unbroken, and if the Depart-

ment wisely exercises its judgment to permit the mortgaging and leasing of property devoted to public use, the interruption in such use is wholly unexpected and perhaps unavoidable.

As a general principle of law, the power to alienate property of a public service corporation, such as a railroad organized under a charter of the commonwealth, is not that of the ordinary corporation organized solely for trading and manufacturing purposes. The public and legislature have an interest in the property of a public service corporation. The classic statement of the legal status of railroad property, frequently referred to, is to be found in the language of Chief Justice Shaw in Worcester v. Western R. Corp. (1842) 4 Metc (45 Mass) 564, 566: "It is true that the real and personal property, necessary to the establishment and management of the railroad, is vested in the corporation; *but it is in trust for the public.* The company has not the general power of disposal incident to the absolute right of property, and they are obliged to use it in a particular manner, and for the accomplishment of a well-defined public object; and they are required to render frequent accounts of their management of this property, to the agents of the public; and they are bound ultimately to surrender it to the public at a price and upon terms established."

The latter part of the quoted statement has been brought forward from the early railroad charters and is incorporated in §§ 6 and 7 of said Chap. 160 of the General Laws (Ter. Ed.), to which all railroad charters granted by the commonwealth are subject. This is the right of the commonwealth, under § 6, at any time, after the expiration of twenty years from the opening of the railroad to purchase of it from the corporation, by reimbursing the amount of capital paid in with a net profit of 10 per cent a year, as therein provided. The next section, § 7, specifically authorizes the commonwealth to take railroad property and franchises by eminent domain. Eminent domain is ordinarily exercised for strictly public purposes, and the power of taxation is not allowed to be used for the promotion of business enterprise, so that the right reserved to the commonwealth under § 7 is also a special right restraining the free power of alienation of railroad property. Lowell v. Boston (1873) 111 Mass 454; Opinion of Justices (1910) 204 Mass 607, 91 NE 405.

While it may be said that under present economic conditions affecting railroads in general the exercise of such reserved rights by the commonwealth at this day and in the near future are hardly to be realized, nevertheless the reserved rights exist in the commonwealth, whether they do in the other states, and it is not for this Department to abrogate nor waive such reserved rights without specific authority.

Among the wealth of judicial expression to be found in the books to support the general proposition that a railroad, and particularly one operating under a public charter in Massachusetts, cannot dispose or divest itself of substantially all of its property without the consent of the legislature, we are content to limit this discussion to include the following:

In Attorney General v. Boston & A. R. Co. (1919) 233 Mass 460, 463,

124 NE 257, the late Chief Justice Rugg, referring to the Boston & Albany Railroad which was leased to the New York Central Railroad Company for the term of ninety-nine years, the consent of the commonwealth being given by statute in 1900, Chap. 468, said: "A franchise to be a corporation was granted to the defendant for the purpose of building and operating a railroad for the accommodation of the public. That was the dominant aim of its organization. It could not, merely of its own volition, sell, mortgage, or lease its property or franchise in such a way as to deprive itself of the power of accomplishing the ends for which it was created. . . . Leasing of its entire property was not one of these ends. The approval of the commonwealth was a prerequisite to the validity of the lease of the defendant. That lease, so approved, stripped the defendant of power to operate its railroad and to perform most of the public services which justified its corporate existence."

"A public service corporation, by accepting the rights and privileges conferred by its act of incorporation, and by entering into the enjoyment of its franchises, undertakes to perform all the public duties required of it. Under the circumstances here disclosed, it cannot surrender its franchise nor disable itself from the performance of its public functions *without the consent of the legislature.*" Attorney General ex rel. Corp. Comr. v. Haverhill Gas Light Co. (1913) 215 Mass 394, 400, 101 NE 1061, Ann Cas 1914C 1266. The decision in that case quotes from Weld v. Gas & Electric Light Comrs. (1908) 197 Mass 556, 84 NE 101, wherein Chief Justice Knowlton, speaking for the court, referring to a gas and electric light company, said: "Without legislative authority, it cannot sell its property and franchise to another party in such way as to take away its power to perform its public duties."

In Re Opinion of Justices, given to the general court in 1927 (261 Mass. 556, 594, 159 NE 70, 76) relating to pending bills concerning public control of the Boston Elevated Railway System and the proposed sale of its property and franchises to a new corporation chartered for the purpose of acquiring the same, the justices had occasion to make the following observation: "The Boston Elevated Railway Company is a public service corporation. Its chief corporate purpose is to afford carriage of passengers for hire within parts of Boston and nearby cities and towns by means of cars moving mainly by electricity on and through elevated structures, subways, tunnels, and surface street railway tracks, and other means adapted to that end. *It cannot sell or alienate its rights and property without legislative permission. The nature of its business is public.*" And again on page 597: "It is not within the charter powers of the Boston Elevated Railway Company to sell its franchises, property, and privileges at the volition of its stockholders as provided in the proposed bill."

In the protection of the public interest, the rule goes even beyond direct conveyances and transfers without legislative authority, and with logical consistency places under the ban all contracts and arrangements having a disabling effect upon the

ability of a public railroad to perform its public functions.

A quotation from an English case approved in Davis v. Old Colony R. Co. (1881) 131 Mass 258, 270, and supported by many decisions cited, establishes the proposition, "There is another principle of equal importance, and equally conclusive against the validity of this contract, which, if not coming exactly within the doctrine of ultra vires as we have just discussed it, shows very clearly that the railroad company was without the power to make such a contract. That principle is, that where a corporation like a railroad company has granted to it by charter a franchise intended in large measure to be exercised for the public good, the due performance of those functions being the consideration of the public grant, any contract which disables the corporation from performing those functions, which undertakes, without the consent of the state, to transfer to others the rights and powers conferred by the charter, and to relieve the grantees of the burden which it imposes, is a violation of the contract with the state, and is void as against public policy."

In Gibbs v. Consolidated Gas Co. (1889) 130 US 396, 410, 32 L ed 979, 9 S Ct 553, an agreement between two gas light companies that one company should lay no more gas pipes or mains for the supply of gas and that all future pipes and mains should be laid by and remain the property of the other company, was held unenforceable: "It is also too well settled to admit of doubt that a corporation cannot disable itself by contract from performing the public duties which it has undertaken, and by agreement compel itself to make public accommodation or convenience subservient to its private interests." See also Thomas v. West Jersey R. Co. (1880) 101 US 71, 25 L ed 950, and Central Transp. Co. v. Pullman's Palace Car Co. (1891) 139 US 24, 35 L ed 55, 11 S Ct 478, both cited in Weld v. Gas & Electric Light Comrs. *supra*. But in the Weld Case, 197 Mass at p. 560, an arrangement between two Massachusetts gas companies to avoid duplicating lines in the same streets was held to be a detail of administration which, under the conditions there presented, did not operate adversely to the public interest. The court was careful, however, to remark that,—"We are not called upon to determine in this case whether such an arrangement could be availed of as a justification, if, unexpectedly, it should turn out that the public interest was injuriously affected. We do not suggest that a corporation can relieve itself of the performance of its duties to the public under its franchise, but only that details of administration, not inconsistent with the legislative policy of the commonwealth, may be left to the corporation, so long as adequate provision is made for the public. We go no further than to say that, under conditions like the present, the public has no grievance which the court would recognize."

Nor is the fact that the franchise of the petitioner road is withheld from the transfer of legal consequence. The prohibition of law is not limited to franchises only. Any alienation of substantially all property, real and personal, so as to disable a railroad from carrying on the business which it has been chartered to do for the

benefit of the public is equally as effective. And it makes no difference whether the transfer is absolute or conditional or to take effect immediately or at some future time. See Richardson v. Sibley (1865) 11 Allen (93 Mass) 65, 71. The statute there under construction was regarded as declaratory of the general rule applicable to all railroads, rather than to make a specific exception to a particular company.

In view of the foregoing, how can this Department, with due respect for the Constitution and law of the commonwealth, which its Commissioners are under oath to support, take it upon their responsibility and grant formal approval to what is proposed by the petitioners?

We cannot close this discussion without some reference to the economic and social aspects of railroad abandonment cases, which have engaged the attention of the Department from time to time, and which establish the vigilance which the public interest demands with respect to such cases. Perhaps one of the best statements on the subject is that of Professor Locklin of the University of Illinois: "Once a railroad is constructed, industries locate along its line, communities spring up, homes and business establishments arise. The subsequent abandonment of the railroad works a hardship upon the industries established along its line and upon the communities that have grown up along it. Property values decline and losses are imposed upon many individuals. It is natural, therefore, that the people, acting collectively through their government, should endeavor to prevent the abandonment of railroad lines. In the words of one writer, 'The state is morally bound to protect its people who have gone out upon these highways, practically at the invitation of the state, and invested in lands and industrial enterprises, the values of which are dependent upon the continued operation of the rail highway,' and it is therefore its 'political duty to protect the people, in so far as it can do so, by the maintenance of rights to use highways which have been established by governmental authority.' "

In view of the position that we find obliged to take, we deem it unnecessary to pass upon the evidence presented by witnesses, including experts, upon the possibility of future profitable operation of the road under certain conditions. It is difficult to take a position without the most careful study and consideration, that a passenger railroad, only a few miles in length, carrying six million passengers annually, or twenty thousand a day, should be abandoned and sacrificed to the junk pile until every reasonable possibility has been exhausted. There seems to be indication of the willingness of patrons to submit to increased rates to save the convenience of direct transportation to Boston. Suggestions were advanced as to savings in methods of operation and other economies, reductions in taxes, and other direct financial assistance and cöoperation both from the towns, the employees, and the inhabitants. There seemed to be a desire from many angles to help save the road. It was clear to all that the effect of the closing of the road would be disastrous to the welfare of the community. The future reconsideration of acceptance of Chap. 510, in view of the narrow

margin rejecting it at the formal town meeting, does not appear to be an impossibility, although the further investment of public money to the extent of $1,500,000 or more required to connect the Narrow Gauge with the Elevated System, appeared to cause doubt in the minds of some as to the advisability of such a solution, weighing its consequences in exposing the town to assume a share in the annual deficit of the system.

[10] We have denied the petitioner's requests for findings of fact. General Laws (Ter. Ed.) Chap. 25, § 5, provides for a review of the rulings of the Department upon questions of substantive law properly arising in the course of any proceedings before the Commissioners. The statute does not contemplate a review of findings of fact. The jurisdiction of the supreme judicial court in equity in the second paragraph of the same section, to review, modify, amend, or annul a ruling or order of the Commission, is restricted "to the extent of the unlawfulness of such ruling or order." The general court has not provided for any other method of review. New England Teleph. & Teleg. Co. v. Department of Public Utilities, 262 Mass 137, 141, PUR1928B 396, 159 NE 743, 56 ALR 784.

The petitioner presented seventeen requests for rulings of law.

Request numbered 4 we grant.

Requests numbered 1, 2, 3, and 15 we deny.

Requests numbered 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, and 17 we deny as immaterial.

Concurring Commissioners: Grant, Curley, Whouley.

Accordingly, after notice, public hearings, and consideration, it is

Ordered, that the petition of the Boston, Revere Beach & Lynn Railroad Company filed with the Department on October 3, 1939 (D. P. U. 5903) be and hereby is dismissed.

And the Department of Public Utilities does hereby certify its disapproval of the debtor's plan of reorganization dated September 8, 1939, referred to in the petition of the Boston, Revere Beach & Lynn Railroad Company, and filed with the Department on October 3, 1939, as to the public interest therein and the fairness thereof.

Commissioners participating in the decision in D. P. U. 5903 were: Grant, Curley, Webber, and Whouley.

GRANT, Commissioner, concurring: Nowhere in the statute law of this commonwealth is there a grant of legislative authority giving this Department power to approve a total abandonment of operations by any railroad. Nor is any such authorization reasonably to be inferred from those statutes relating to abandonment in part of railroad facilities or substantial diminution of services.

The Department of Public Utilities is a creature of the legislature. It was established to carry into effect certain acts of the general court and to perform certain well-defined functions in relation thereto which the legislative body formerly was accustomed to do directly and concerning which it alone has inherent power to act. The Department in this respect is a kind of statutory court. Its authority is discretionary as well as ministerial. It is, however, wholly without power to exercise its discretion except with re-

lation to such matters as have been committed to its wisdom in clear and unambiguous terms.

If the general court intended to delegate to the Department of Public Utilities the untrammeled power to consent to a total abandonment of service by an intrastate railroad it is a proper assumption that such intent would have found expression in words. No railroad may lay its tracks or operate its trains in Massachusetts without first having obtained from the legislature a franchise. Such franchise confers upon the holder certain rights and privileges not common to or enjoyed by a private business corporation, including the right to take property required for railroad purposes by eminent domain. Such a franchise likewise imposes upon the holder certain duties, such as the duty to provide adequate service and accommodations for public travel. Certain statutory remedies are available to the people of the commonwealth in the event of failure by a railroad to observe the conditions of its charter. Circumstances may arise involving acts or omissions by the carrier of a nature so grave as to compel a forfeiture. The legislating body, during one hundred and forty years of utility regulation, have been at considerable pains to provide for all predictable contingencies. They have not, as yet, seen fit to vest in this departmental agency the power to acquiesce in the voluntary dissolution of a railroad company authorized to carry passengers or property for hire.

A railroad may cease operations because of inability to carry on its business except at a loss but its right so to do and to resist compulsion by the legislative branch of the government seeking a continuance of operations is based upon constitutional guaranties and not upon any general or special laws. It cannot be required to continue if such continuance would amount to confiscation of its property by reason of its failure to earn a fair return thereon.

When a railroad goes out of business of its own volition it then becomes the duty of the state to terminate its corporate existence and, in the public interest, to provide, if possible, a substitute service. But until the railroad itself has raised the issue by failure to function there is nothing that may be done upon the representation of the commonwealth except by that body from which the carrier received its corporate powers and operating rights —the general court itself.

There have been instances in the recent past of abandonments of common carrier routes by motor bus companies, to require the continued operation of which petitions were filed with this Department. Under the provisions of § 7 of Chap. 159A of the General Laws (Ter. Ed), the only power residing in this Department to proceed against the carrier is the power to revoke and cancel the certificate of public convenience and necessity issued to the bus company for the route in question, a result anticipated and precisely desired by the company. Such a power is effective only in cases in which this type of operator does not desire to relinquish its entire franchise but proposes merely to curtail or change the service.

It is clear that the jurisdiction of the Department over partial abandonments or substantial diminution of service by a rail carrier, as appears by

General Laws (Ter. Ed.) Chap. 160, § 128; Chap. 159, §§ 10 to 26, inclusive, and by Chap. 243 of the Acts of 1938, inserting in said Chap. 159 a new section, 16A; cannot be extended by implication to confer jurisdiction over total abandonments. It is not disputed that the Department is without authority to require continued operations by an entire railroad system if the company operating such a system refuses any longer to run any trains. Its right to quit is unquestioned. By what manner of interpretation, then, can there be a finding that the Department is empowered to give legislative consent to a complete abandonment of the railroad's facilities? If we have no power to deny a constitutional right how may we consent, having in mind that this question, although undoubtedly considered, was left unanswered by the lawmakers of our state? And when it is pointed out that the only disciplinary power possessed by the commonwealth over railroad companies is the right to revoke a franchise for breach of condition, the absence of any statutory provision for action by this Department upon a petition for total abandonment is perhaps not beyond understanding. What consequence attaches to a petition for approval where no approval is necessary?

It is, however, of some importance to consider the effect of such approval in the case of the Boston, Revere Beach & Lynn Railroad Company in view of the company's position as a petitioner for reorganization under § 77B of the National Bankruptcy laws.

When the company's petition was filed on July 13, 1937, there was no abandonment in contemplation. It was presumed that the company, in good faith, intended, by availing itself of the provisions of § 77B, to avoid bankruptcy and to carry on operations under a plan that would enable it to remain solvent. The first plan presented to the United States district court for the district of Massachusetts at Boston was submitted on September 8th of the present year. This plan does not contemplate continued rail operations but provides for a total cessation of service and, in the words of the petitioner's brief on file with this Department, for a "slow, orderly, and beneficial liquidation" of the assets of the railroad through two liquidating trusts formed for the purpose of acquiring and disposing of all of the petitioner's mortgaged properties.

The plan of reorganization comes before us by order of the Federal court upon the request of the petitioner. It presents a different question from that raised by the petition for consent to the proposed abandonment. So far as our power and duty to act is concerned there is no lack of jurisdiction as it is provided in Par. e (2) of § 77B (11 USCA § 207 (e) (2)) that the reorganization plan of an intrastate public utility corporation shall not be approved "if the regulatory Commission of such state having jurisdiction over such public utility certifies that the public interest is affected by such plan, unless said regulatory Commission shall first approve of said plan as to the public interest therein and the fairness thereof."

There can be no doubt that the public interest is affected strongly by any plan which purposes to close down the operations of a railroad which pres-

ently carries six million passengers a year. These passengers, mainly persons commuting between Lynn and Boston and between Winthrop and Boston, will have to find other means of transportation. Steps in the direction of assisting them so to do have been undertaken by his excellency the governor and by the general court, culminating in the enactment of Chap. 510 of the Acts of 1939. This act provides in part for acquisition by the Boston Elevated Railway Company of certain property of the petitioner in East Boston and Winthrop and the operation of a railway service. To become effective it must be approved, among others, by the citizens of the town of Winthrop. Thus far the latter have failed to act affirmatively in the premises and have indicated to us that they will not do so until it is definitely determined that the petitioner's railroad is to cease operations. It is obvious that some action must be taken in the near future to ensure continued transportation for those now riding upon the Boston, Revere Beach & Lynn Railroad to whom no other commuting service will be available in the event of failure by the Narrow Gauge.

It is difficult to perceive wherein the public interest will be served by approval of the proposed reorganization plan. That the riding public will be affected injuriously by a total abandonment of service must be conceded. But whether the railroad is declared bankrupt and the bondholders institute foreclosure proceedings or a reorganization of the kind here proposed is permitted by order of the court makes very little difference to the public. Their plight will not be helped one iota if the company is permitted to wind up its liquidating trusts and to dispose of its property in that manner. The only ones who will be affected beneficially will be the holders of mortgage bonds who will exchange their securities for new "participation certificates" good for a proportional share of the proceeds of the suggested "slow, orderly, and beneficial liquidation" which the petitioner states is the best thing for all concerned.

At the bottom of page 13 of the petitioner's brief it is stated: "The plan provides for the transfer to a liquidating trust of all the property of the railroad used or useful for railroad purposes, the 'right of way' and the cash now in the hands of the mortgage trustee. This transfer permits the property used or useful for railroad purposes *to be held as a unit* for the period of time necessary to insure its slow, orderly, and beneficial liquidation. As a result, for a substantial period, all the property used or useful for railroad purposes would be available for purchase by any new or existing transportation system which might desire to take it over."

This line of reasoning, it seems to me, is defective if the purpose of the petitioner is to establish that its reorganization plan is drawn as well in the interest of the traveling public as for the benefit of the mortgagees. If the provisions of Chap. 510 of the Acts of 1939, relating to acquisition by the Boston Elevated Railway Company of the railroad's property in East Boston and Winthrop, are accepted and the Elevated undertakes to rebuild it as a standard-gauge railway and to operate it as a part of the Elevated System, it is extremely remote to spec-

ulate upon the possible market value of the remainder of the petitioner's property for transportation purposes.

It is not reasonable to suppose that even if there existed a possibility of purchase and operation by other interests as a going concern of the whole or a part of the petitioner's railroad property, the commonwealth would permit the people who now depend upon the Narrow Gauge for service to be without transportation facilities until the reorganized company could find a purchaser willing and able to operate the road. It is likewise unreasonable to suppose that if certificates of public convenience and necessity are issued to responsible operators for a substituted motor coach service in place of the rail service now operated, the commonwealth could equitably revoke said certificates and banish said operators from this territory merely upon receipt of information that the Boston, Revere Beach & Lynn, under new management or ownership, was ready to run again.

There is no question in my mind but that the petitioner's railroad is not in a condition that will permit further operation without the expenditure of considerable money for necessary repairs. A substantial amount is necessary to meet tort claims filed against the company since July 13, 1937. The wage question is another serious complication. In the words of Professor William J. Cunningham, while testifying in behalf of the petitioner, "the railroad is dying on its feet."

This being so it is only a question of time—perhaps a mere matter of days or weeks—when the railroad will come to a stop. Nothing we can do will prevent it. But, on the other hand, nothing we may do to facilitate the proposed plan of reorganization will be of the slightest help to any Narrow Gauge passenger in securing transportation to and from his home or place of employment. And therein lies and ought to reside our sole concern as we are the guardians of the public interest. The plan to reorganize the railroad for liquidation purposes is an excellent one for protecting the security of the mortgagees but the only function we are called upon to exercise under paragraph e (2) of § 77B of the Bankruptcy Law is that of deciding whether or not the public interest is affected by the plan and, if it is, of approving or disapproving the said plan "as to the public interest therein and the fairness thereof."

I find it impossible to agree with the contention of the petitioner that this plan ought to be approved in the public interest. I am of opinion that it has nothing whatever to do with the public interest. The petition before us is in the nature of a suggestion that the Department of Public Utilities lend itself to the consummation of a paper transaction the purpose of which is to effect a somewhat larger realization than presently anticipated, upon the assets of a public utility corporation which is upon the threshhold of dissolution. Adjudication of matters of this kind properly is a function of the United States courts, upon which devolves the duty of conserving and distributing the assets of a bankrupt debtor. In my opinion, we are upon tenable ground in finding that the petitioner's reorganization plan is not in the public interest and, for that reason, in withholding our approval.

Even if it were possible to assume

that such a plan might beneficially affect the public interest by making available for public use at some future date the property of the petitioner, it is our duty to disapprove any plan which contemplates no continuation of service but sets up a trust to secure to the bondholders a value upon their mortgage security in excess of its fair market value at the time when the abandonment of service takes place. If there is any conceivable public use for the property of this railroad the public ought to be permitted to acquire it at the lowest possible price. It ought not to be withheld indefinitely for the benefit of those who acquired a substantial part of it through exercise of the power of eminent domain, whose interests are peculiar to themselves and not those of the community as a whole.

UNITED STATES DISTRICT COURT, D. MONTANA

Great Northern Railway Company

v.

Raymond T. Nagle, Attorney General et al.

[No. 3010.]

(28 F Supp 812.)

Service, § 22 — Jurisdiction of state — Railroads —Constitutional law.

The state can require railroads to furnish reasonable and adequate train facilities to serve not only the local necessities but also the local convenience and may require additional service in a proper case, but the property of such carriers is entitled to full protection and cannot be taken without just compensation or due process of law.

[August 28, 1939.]

SUIT *to enjoin enforcement of orders of the Commission requiring railroad to continue train service; denied.*

APPEARANCES: Weir, Clift, Glover & Bennett, of Helena, Mont., for plaintiff; A. H. Angstman, of Helena, Mont., C. E. Baker and J. E. McKenna, both of Lewistown, Mont., H. O. Vralsted, of Stanford, Mont., and Harrison J. Freebourn and John W. Bonner, both of Helena, Mont., for defendants.

Before Haney, Circuit Judge, and Pray and Webster, District Judges.

PRAY, D. J.: Since the former opinion of the court was filed on October 1, 1936, 16 F Supp 532, 537, in the above cause, a master pro hac vice was appointed to hear and examine witnesses and record or cause to be

recorded the testimony and evidence, and make report to the court. The report has been filed and briefs submitted by counsel for the respective parties. After the former hearing it seemed necessary to present further evidence in respect to train service at Lewistown and Sweet Grass, and in that connection the court said: "In the present state of doubt on this phase of the case the court does not feel justified in granting the application for injunction, requiring a discontinuance of the Sweet Grass and Lewistown trains." But the court at the same time held that conditions were different in regard to passenger service between Great Falls and Butte and that from the showing made by plaintiff it did not appear that public necessity or convenience required the continuance of the service furnished by the two trains in question, Nos. 237 and 238, between these two cities, and that under the proof it was deemed unreasonable to order otherwise.

From a consideration of the report, transcript, and exhibits filed by the master, the court is still of the opinion that these two trains, 237 and 238, should be discontinued, and that a final order should be entered to that effect; and furthermore, from a consideration of the evidence from the same source, it seems to the court that the continued operation of the passenger trains in question between Great Falls and Lewistown and between Shelby and Sweet Grass is not only a convenience to the public but also a necessity. Several places, as shown by the evidence, are served by the trains and not by the busses and trucks. Even where the towns are served, or partly served, by the last two means of transportation, the service does not appear to be adequate or altogether dependable. Winter weather conditions have to be taken into account when sole reliance is placed upon highway transportation by the residents of the several communities. The suggestion of counsel that if the trains were discontinued residents of towns and communities off the truck and bus lines might furnish their own means of transportation to offset the loss of train service does not appeal to the court as a very strong defensive answer under present conditions.

Great loss is claimed by plaintiff in maintaining a service the public does not use, resulting in an unreasonable burden on interstate commerce. Some of the witnesses for defendants assert that this loss is considerably exaggerated. However, it is apparent to the court that there is a substantial loss in maintaining this service. No doubt the state can require the carriers to furnish reasonable and adequate facilities to serve not only the local necessities but the local convenience, and may require additional service in a proper case, but on the other hand the property of the railway is entitled to full protection and cannot be taken without just compensation or without due process of law. Taking into account the population of the towns and adjacent communities, and the pursuits of the residents thereof, and the amount of travel and volume of business generally, is the court prepared to say that there would be adequate service if these trains were removed? Is not the service now in use not only convenient but necessary, and from a fair consideration of the testimony does it not appear quite conclusively

that the public, or that part of the public interested in the territory involved, is urgently demanding the continuance of these trains?

No such argument has been presented for the continuance of trains 237 and 238; the court is unanimously of the opinion that the action of the Board was unreasonable in that respect. But a different conclusion seems inevitable in regard to the other trains, and it does not appear necessary to discuss at greater length the questions presented at this time since they are substantially the same as those considered in a former opinion.

Consequently, the court being now duly advised and good cause appearing therefor, the application for injunctive relief as prayed for in plaintiff's complaint in respect to the trains Nos. 239 and 240, and 41 and 42 (now 42 and 43) will be denied. Counsel may submit brief findings of ultimate facts in accordance with the views herein expressed. Each side to pay its own costs.

All concur.

PENNSYLVANIA SUPERIOR COURT

Solar Electric Company

v.

Pennsylvania Public Utility Commission et al.

(No. 347.)

J. B. Stewart et al.

v.

Pennsylvania Public Utility Commission et al.

(— Pa Super Ct —, 9 A(2d) 447.)

Return, § 9 — Fair value basis.

1. The Commission is authorized by statute to find the fair value of utility property for rate-making purposes, p. 283.

Valuation, § 208 — Emergency plant — Reproduction cost.

2. A power plant used as a standby when current is bought should be included in reproduction cost of utility property for rate-making purposes at a figure representative of its value as an emergency, standby, or reserve plant, p. 286.

Valuation, § 36 — Rate base — Original cost as measure.

3. A Commission order fixing a rate base of a public utility based solely upon the finding of original cost of fixed capital, without giving any consideration whatever to the reproduction cost of the property in ascertaining its present fair value, constitutes an error of law, p. 288.

Valuation, § 40 — Rate base — Essential elements — Reproduction cost.

4. The cost of reproducing utility property is not only a relevant but also an essential element in the ascertainment of its fair value for rate-making purposes, and must be considered even though estimates of reproduction cost vary materially from each other, p. 288.

Valuation, § 5 — Duty of court and Commission — Applicable law.

5. It is the duty of the court and the Commission, in ascertaining and fixing the fair value of utility property for rate-making purposes, to apply the law of the land to facts developed of record until that law has been changed in a constitutional manner, p. 292.

Procedure, § 30 — Commission duties — Findings.

6. The Commission is charged with the statutory duty of making findings in sufficient detail to enable the court on appeal to determine the controverted questions presented by the proceeding, and whether the proper weight was given to the evidence, p. 292.

Appeal and review, § 53 — Grounds for reversal — Orders — Valuation — Reproduction cost.

7. The appellate court must reverse a Commission order fixing the fair value of utility property for rate-making purposes, where the Commission erroneously gave no weight to the evidence of reproduction cost and made no findings relative to that cost, since such order is based upon an error of law, p. 292.

Valuation, § 74 — Original cost determination — Belated entries.

8. Entries made upon the books of a public utility many years afterwards, intended to bring them into relative approximation with the financial condition of the company, cannot be used as an accurate determination of cost such as will form the exclusive basis for fixing the present value of the plant, p. 292.

Valuation, § 67 — Original cost determination — Stock dividends.

9. The court takes no account of stock dividends in fixing the investment in utility property, since they do not increase or diminish the cash investment in the plant, p. 292.

Appeal and review, § 68 — Disposition of valuation case.

10. The appellate court, using its own independent judgment upon a review of the evidence in the record, will fix the fair value of utility property used and useful in the public service, where the interested parties have asked the court not to increase the record further by returning it to the Commission to determine a rate base upon correct principles, although the court could do so where the Commission used a faulty and erroneous method of valuation, p. 294.

Appeal and review, § 33 — Scope of review — Independent findings.

11. The duty of the appellate court to exercise its own independent judgment as to both law and facts in a rate case is limited to cases where

the utility claims that confiscation of its property would result from the enforcement of the Commission's order, p. 294.

Valuation, § 132 — Overheads — Omissions and contingencies.

12. Allowances for omissions and contingencies must be considered in estimating the reproduction cost of a public utility, but in arriving at a proper percentage the rate should be applied to the physical property alone, and not to intangibles or working capital, p. 295.

Valuation, § 132 — Overheads — Omissions and contingencies.

13. A 3 per cent allowance on the physical property of a public utility for omissions and contingencies was held to be reasonable in determining the fair value of electric property for rate-making purposes, p. 295.

Valuation, § 143 — Overheads — Preliminary expenses.

14. A public utility can capitalize preliminary expenses incurred during the period between the initiation of an undertaking to furnish public service and the time of completion of the plant ready to deliver service, when no revenues are forthcoming, p. 296.

Valuation, § 144 — Overheads — Preliminary expenses.

15. An allowance of 1.5 per cent for preliminary organization expenses was deemed reasonable in estimating the fair value of electric property for rate-making purposes, p. 296.

Valuation, § 134 — Overheads — Preliminary expenses — Engineering.

16. The Commission deprived a utility of a reasonable return on the fair value of its property dedicated to a public use when it failed to consider, in fixing the fair value, the claim of the utility for an allowance for engineering and administration expenses incurred before such property was ready for service, p. 296.

Valuation, § 114 — Cost of financing.

17. An allowance for cost of financing should be made when reproduction cost is considered in determining present fair value of utility property for rate-making purposes, p. 297.

Valuation, § 114 — Cost of financing — Brokerage — Legal fees.

18. Cost of financing comprehends brokerage fees and costs of issuing securities and legal fees involved therein, p. 297.

Valuation, § 116 — Cost of financing — Discount.

19. The cost of financing may not include interest or discount paid to the purchaser of securities for the use of money, p. 297.

Valuation, § 320 — Confiscation — Intangibles.

20. That intangible values allowed above bare physical value of utility property are frequently comprehended under different categories must be considered before it can be said that there is confiscation in determining a rate base, p. 297.

Valuation, § 114 — Cost of financing — Marketing stock.

21. The cost of marketing the stock of a public utility is not a matter for capitalization as part of the rate base, p. 297.

Valuation, § 115 — Cost of financing — Brokerage.

22. That a public utility did not actually pay brokerage fees does not prevent the inclusion of a fair amount on this account in the cost of financing, p. 297.

Valuation, § 338 — Capitalization of losses.

23. Whether or not losses or expenditures are entitled to be capitalized for rate-making purposes does not depend entirely upon deficits of operation, p. 299.

Valuation, § 340 — Deficit theory.

24. That a public utility has been operated at a loss is not sufficient to permit such deficits to be added to the rate base, p. 299.

Valuation, § 343 — Going value — Lag in earnings unproven.

25. Where there has not been a lag in a utility's earnings there is no reason why there should be any special allowance for going concern value, for there has been no loss, p. 299.

Valuation, § 338 — Going value — Lag in earnings — Evidence.

26. Testimony based wholly upon theoretical lag in a utility's earnings is insufficient to support a claim for an allowance for going concern value, p. 300.

Valuation, § 343 — Going value — Evidence.

27. A claim for an allowance for going concern value, when allowed, must be supported by evidence of actual lag in the utility's earnings, not necessarily from the books of the utility, p. 300.

Valuation, § 330 — Going value — Allowances.

28. The right to any allowance for going value depends upon the facts shown in the particular case, p. 300.

Depreciation, § 26 — Annual allowance — Consistency with accrued depreciation.

29. Allowances for annual depreciation should be reasonably consistent with allowances for accrued depreciation, p. 301.

Depreciation, § 29 — Annual allowance — Experience.

30. Information as to the actual experience of a particular utility, when available, is of great value in determining the allowance for annual depreciation, p. 301.

Depreciation, § 23 — Annual allowance — Rights of investors.

31. Consideration must be given to the interests of the investing public, as well as to the consumer, in determining a proper amount to be allowed for depreciation, p. 302.

Depreciation, § 32 — Sinking-fund basis — Rate of interest.

32. Increment by way of return in the form of interest should be calculated on the basis of the highest grade investment, such as Federal, state, or municipal securities, if the sinking-fund method is adopted as a basis for depreciation allowance, p. 303.

Depreciation, § 17 — Basis — Overhead items.

33. Overhead items of administrative and engineering expenses incident to construction, and an allowance for omissions and contingencies, are as much a part of the physical plant as anything else entering into its construction, depreciating in value and becoming obsolescent, and should be included in the basis for calculating depreciation, p. 303.

Evidence, § 30 — Record of former hearing — Authenticity.

34. A report which had been submitted to the Federal Power Commission at a former hearing to show affiliation of utilities was properly admissible

in a rate proceeding, where such report was identified and where the ones who made up the record explained its sources, p. 305.

Expenses, § 84 — Payments to affiliates — Burden of proof.

35. A public utility alleging that charges paid to affiliates should be included in its operating expenses has the burden of showing that such expenses were for services which were reasonable and proper and that amounts so paid were not in excess of the reasonable cost of furnishing such services, p. 306.

Expenses, § 84 — Payments to affiliates — Proof.

36. Charges arising out of the relationships between affiliates should be carefully scrutinized, and if there is an absence of data and information from which the reasonableness and propriety of the services rendered and the reasonable cost of rendering such services by the servicing companies can be ascertained by the Commission, allowance is properly refused, p. 306.

Expenses, § 92 — Rate case expenses — Amortization.

37. Rate case expenses should be amortized over a reasonable period, p. 311.

Expenses, § 91 — Rate case expenses.

38. A public utility whose lawful rates in effect are attacked should be allowed expenses incurred in presenting its side of the case in a proceeding by a Commission to determine the reasonableness thereof even though the Commission finds them to be excessive, p. 311.

Expenses, § 9 — Duty of Commission.

39. The Commission, in rate making, must determine what the fair and reasonable expenses of operating a public utility would be, and, in so determining, modern business realities should not be ignored, p. 313.

Return, § 22 — Means of determining.

40. The rate of return should vary according to the circumstances of each case and be determined from the evidence adduced, like any other fact, p. 315.

Return, § 20 — Reasonableness — Factors considered.

41. The rate of return should be adequate under efficient and economical management to pay all expenses of operation, provide for depreciation, payment of interest and reasonable dividends, and for a reasonable amount to be applied to a surplus account, p. 316.

Return, § 87 — Electric utility.

42. Six per cent is a fair return for an established electric company in usual and ordinary circumstances, with its existence assured and operating under favorable circumstances, p. 316.

Rates, § 339 — Electric — Classes of service.

43. An electric company can, in the absence of any proof of unfairness, establish different schedules of rates for electric service for domestic, commercial, and industrial uses, p. 317.

PENNSYLVANIA SUPERIOR COURT

APPEALS *from Commission order requiring electric company to modify its rate schedule; order reversed in part and appeal by complainants dismissed. See Commission decisions, 20 PUR(NS) 398; 24 PUR(NS) 337; 26 PUR(NS) 365.*

Argued before Keller, P. J., and Cunningham, Baldrige, Stadtfeld, Parker, Rhodes, and Hirt, JJ.

APPEARANCES: David I. McCahill, of Pittsburgh, Raymond E. Brown, of Brookville, and Edward F. Huber, of New York city, for appellant Solar Electric Co.; W. N. Conrad and Lavelle A. Wilson, both of Brookville, for appellant Stewart; Herbert S. Levy, Assistant Counsel, of Lancaster, Samuel Graff Miller, Assistant Counsel, of Harrisburg, and Harry M. Showalter, Counsel, of Lewisburg, for appellee Pennsylvania Public Utility Commission; W. N. Conrad and Lavelle A. Wilson, both of Brookville, for interveners borough of Brookville and others.

PER CURIAM: The magnitude of the record in these appeals—nearly ten thousand printed pages—is out of all proportion to the size of the utility involved or the field of its operations; and those responsbile for its unnecessary expansion should be visited with a share of its cost. Where, as in the Scranton-Spring Brook Water Service Company Cases (Scranton-Spring Brook Water Service Co. v. Public Service Commission (1935) 105 Pa Super Ct 203, PUR1932C 471, 160 Atl 230, and Id., 119 Pa Super Ct 117, 14 PUR(NS) 73, 181 Atl 77), the territory involved covered a large section of two counties, embracing two large cities and many other good sized cities and boroughs, and the valuation of the water system amounted to scores of millions of dollars, there might be some reason for a record of this size, but an electric light plant in a borough of less than 5,000 inhabitants, and with fewer than 1,700 customers, valued at from $100,000 to $250,000, furnishes no excuse for it.

This is a rate case. It was complicated, and to some extent delayed, by proceedings for the acquisition of the plant, (1) by a larger company[1] and (2) by the borough of Brookville.[2] It began on August 13, 1929, with the filing of a complaint by J. B. Stewart et al., alleging that the rates charged by Solar Electric Company, hereinafter called Solar, or respondent, were excessive and unreasonable, and praying for the reduction of the company's rates so as to return not more than 7 per cent upon the fair and reasonable value for rate-making purposes of its property used for the convenience of the public. This was entered to Complaint Docket, No. 8126. At the time this complaint was filed there was pending before the Commission an application for the sale of

[1] Penn Pub. Service Corp. v. Public Service Commission (1926) 88 Pa Super Ct 369; Brookville v. Public Service Commission, 102 Pa Super Ct 503, PUR1931E 157, 157 Atl 513, affirmed (1932) 307 Pa 194, PUR1933A 80, 160 Atl 856.

[2] Solar Electric Co. v. Public Service Commission (1926) 88 Pa Super Ct 495; Solar Electric Co. v. Brookville (1927) 290 Pa 156, 138 Atl 845, and Id., 290 Pa 372, 138 Atl 914; Solar Electric Co. v. Brookville (1930) 300 Pa 21, 150 Atl 92.

all the property and franchises of Solar to Penn Public Service Corporation, or its successor, Pennsylvania Electric Company, hereinafter called Pennsylvania Electric. Some time later the borough of Brookville was permitted to intervene as a party complainant. As the complaint affected rates that had been in force without objection for a long period of time the burden was on the complainants to sustain their complaint. An answer was duly filed by Solar, but a hearing of the matter was delayed pending a decision of the question whether the Commission should act upon the application for approval of the sale of all the property and franchises of Solar to Pennsylvania Electric before hearing the complaint. This court decided in Brookville v. Public Service Commission, 102 Pa Super Ct 503, PUR 1931E 157, 157 Atl 513, affirmed (1932) 307 Pa 194, PUR1933A 80, 160 Atl 856, that the *fair value of the property* should be determined and the rate case be disposed of before passing on the approval of the sale.

Accordingly hearings on the rate case were begun on September 30, 1931. An inventory and appraisal made by the J. N. Chester Engineers, as of August 31, 1931, was introduced by the complainants. Two separate appraisals showing the reproduction cost, (1) new and (2) depreciated, of respondent's property were introduced by the respondent, one made by E. D. Dreyfus and the other by Maurice R. Scharff, both qualified engineers, based on an inventory made by Mr. Dreyfus and checked by Mr. Scharff. The Chester inventory differed in material respects from that used by Dreyfus and Scharff and omitted some essential items of property contained in the latter. The engineer who testified for the complainants in support of the Chester Engineers appraisal was Daniel E. Davis, so in referring to that appraisal we shall distinguish it as the Davis appraisal or valuation.

Under date of April 14, 1936, the Commission entered an interim order requiring the parties to bring down their inventories and appraisals, submitted as of August 31, 1931, to December 31, 1935. These were submitted at hearings held on August 18 and 19, 1936.

On June 1, 1937, the Public Service Company Law was superseded by the Public Utility Law, approved May 28, 1937, P.L. 1053, 66 PS § 1101 et seq. On June 8, 1937, the Public Utility Commission, of its own motion, instituted an inquiry and investigation of Solar's rates, to Complaint Docket, No. 11404, which was, later, on motion of the attorney for the Commission consolidated with the prior complaint, No. 8126. Section 312 of the Public Utility Law, 66 PS § 1152, provides that in any proceeding upon the motion of the Commission, involving any proposed or existing rate of any public utility, the burden of proof to show the rate involved is just and reasonable shall be upon the public utility. We are of opinion that this change in the law applied to the consolidated complaint in these cases.

At the same time, the new Commission directed the complainants and respondent to bring down the data. relating to the inventories and appraisals of respondent's property, from December 31, 1935 to June 1, 1937. This was done by respondent and placed in the record at a hearing held on June

30, 1937. The inventory and appraisal furnished by *complainants* was not *brought down* to June 1, 1937, but was *trended* to a date as of May 31, 1937, and placed in the record at a hearing held on October 29, 1937. This did not include additions to the inventory since August 31, 1931, of the net value of $11,825.

Before the taking of testimony was concluded, the Commission, under date of October 5, 1937 (20 PUR(NS) 398) acting under the authority given it in § 310 of the Public Utility Law, 66 PS § 1150, fixed a tentative fair value of respondent's property at $200,000, and entered the following order: "It is *ordered:* That temporary rates be and the same are hereby imposed under § 310 of the Public Utility Law and that Solar Electric Company, respondent, file with the Commission on or before October 15, 1937, a new tariff, to become effective upon one day's notice, which shall effect a reduction in its gross operating revenues of not less than $11,300 per annum."

A review of the interim report, which is found in the Record, Vol. 1, pp. 33a to 51a, shows a careful consideration by the Commission of the evidence then in the record, including not only the book value assigned to fixed capital, as disclosed by the books of the company, but also the reproduction cost of the property and the accrued depreciation, and this brought it within the constitutional requirements necessary for such a temporary rate order, as laid down by Mr. Justice Reed, speaking for the Supreme Court of the United States, in Driscoll v. Edison Light & P. Co. 307 US 104, 83 L ed 1134, 28 PUR(NS) 65, 59 S Ct 715, filed April 17, 1939, which we shall refer to, at more length, further on.

Testimony before the Commission was concluded on October 29, 1937. On July 5, 1938 (24 PUR(NS) 337) the Commission filed its report and order nisi. In this report, the Commission wholly disregarded the evidence as to reproduction cost new of the utility's property used and useful in the public service, less depreciation, although, by its order and the order of its predecessor, the utility had twice been required to bring down its estimates and appraisals of such reproduction cost and depreciation, first, from August 31, 1931, to December 31, 1935, and, second, to June 1, 1937; and also irrespective of the fact that, in entering its interim order of October 5, 1937, *supra,* the Commission had used and relied upon, to some extent, the estimates and appraisals of reproduction cost thus brought down to present values; and, instead, it stated, 24 PUR(NS) at p. 362, that: "It is the opinion of the Commission that the original cost of existing property, prudently invested, used and useful in utility enterprise, without any deduction for accrued depreciation, represents the money which has been invested and should, therefore, constitute a proper rate base." This it fixed at $143,765.57 and, with an allowance of $8,836 for working capital and supplies on hand, it fixed the rate base at $152,601.57 on which it allowed an annual return of 6 per cent, or $9,156. It also determined that the total annual net revenue to which Solar was entitled was $72,535, made up of $9,156 aforesaid, plus operating expenses, $54,539, an-

nual depreciation, $2,297, and taxes, $6,543. It found that the operating revenue for the year 1936 and five months ended May 31, 1937, was $139,655.71 or $8,215.04 per month; that on this basis the operating revenue for a 12-month period would be $98,580, which exceeded the allowable net revenue of $72,535, by $26,045, and it directed the respondent, Solar, further to modify its rates by an annual reduction of $14,745 in addition to the reduction of $11,300 provided for in its interim order of October 5, 1937, fixing temporary rates, and ordered it to file, post, and publish a new tariff covering rates for electric service "consisting of a *single schedule* of block meter rates, applicable to all classes of customers, except street lighting"—instead of the company's division into domestic, commercial and power schedules—which was designed to produce the allowable annual net revenue of $72,535. Exceptions to this order were filed by both the respondent and the complainants. Except for slight modifications, not necessary to be recited, these were dismissed on November 1, 1938 and a final order as above set forth entered (26 PUR (NS) 365). Appeals were filed by both respondent and complainants.

Fair Value

[1] A careful reading of the Commission's order of July 5, 1938, *supra,* fails to disclose to us any finding or determination by the Commission that the rate base fixed by it, inclusive of working capital, $8,836, at $152,601.57 was the *fair value* of the respondent utility's property, used and useful in the public service; and, in view of the use of the term "fair value" in the order of October 5, 1937, *supra,* and its definite exclusion from the order of July 5, 1938, *supra,* we deem this omission not an oversight, but an attempt on the part of the Commission to avoid the rulings of the courts that the *fair value* used as the rate base must be the *present fair value,* that is, the fair value at approximately the time of the determination. As stated by the present chief justice in Shirk v. Lancaster (1933) 313 Pa 158, 171, 169 Atl 557, 563, 90 ALR 688, where the rates charged for water by a municipality were under consideration, "If this were a private water company and a sum sufficient had been found to cover operating expenses and contingencies, there would be allowed in addition a fair return on the *present value* of the property." (Italics supplied.) See, also, San Diego Land & Town Co. v. National City (1899) 174 US 739, 757, 43 L ed 1154, 19 S Ct 804, 811, where the equivalent expression is used, "the reasonable value of the property *at the time it is being used for the public";* and Los Angeles Gas & E. Corp. v. California R. Commission, 289 US 287, 305–308, 77 L ed 1180, PUR 1933C 229, 53 S Ct 637, where the latter expression is used interchangeably with "present value"; and cases of the United States Supreme Court cited in Bangor Water Co. v. Public Service Commission (1923) 82 Pa Super Ct 48, at p. 55.

Fair value is the thing which this Commission and its predecessor were authorized by the legislature to ascertain. By § 20 of Art. V of "The Public Service Company Law" of July 26, 1913, P.L. 1374, 66 PS § 683, which was in force when the com-

plaint in this proceeding was filed, the Public Service Commission was given power "to ascertain and determine the fair value of the property of every public service company," whenever it deemed "such valuation or determination" necessary or proper. That section also specifically enumerated certain matters to be considered by the Commission "in ascertaining and determining such fair value," and to be "given such weight by the Commission as may be just and right in each case," among which was "the reproduction costs of the property, based upon the fair average price of materials, property, and labor." This section of the Statute of 1913 was supplied by § 311 of Art. III of the new "Public Utility Law" of May 28, 1937, P.L. 1053, 66 PS § 1151. Under it, fair value is still the thing the Commission is authorized to ascertain and fix. The applicable provision of the new statute reads: "The Commission may, after reasonable notice and hearing, ascertain and fix the *fair value* of the whole or any part of the property of any public utility, in so far as the same is material to the exercise of the jurisdiction of the Commission, and may make revaluations from time to time and ascertain the fair value of all new construction, extensions, and additions to the property of any public utility." (Italics supplied.) While the new act (Public Utility Law) does not go into details as to the items which should be considered by the Commission in fixing the fair value of a utility's property, as fully as the old act (Public Service Company Law) did, this was not because of any intention to change the law in this respect, but because the decisions of the United States Supreme Court and of our supreme court had definitely settled the principles to be applied by the Commission in arriving at such fair value, and they did not require elaboration in the statute.

As before stated, three reproduction cost estimates, new and depreciated, were received in evidence during the hearings in this case and used by the present Commission "to demonstrate the basis of [its] determination of its tentative calculation of the fair value of the property of respondent" for the purpose of prescribing *temporary* rates, effective October 15, 1937. However, in its final report of July 5, 1938 (24 PUR(NS) 337, 355, 360) the Commission described these estimates as "unsatisfactory, conjectural, and without probative value."

In the course of that report the Commission expresses its opinion that its predecessor, and incidentally the courts, had failed "to perceive the problem [presumably, of determining the fair value of a utility's property for rate-making purposes and fixing just and reasonable rates] from the investors' and ratepayers' standpoint." It then gives expression to its intention to determine "the rate base . . . in a manner somewhat different from that reflected in the orders issued in the past." In this connection the Commission said:

"Heretofore the rate base has been determined generally by the Commission on a basis of reproduction cost new less accrued depreciation. This formula produced a result arrived at entirely through approximations and theoretical calculations and, when determined, had no lasting usefulness,

because of fluctuations in material and labor costs from year to year.

"The cost of reproduction as a determining factor in value had, it is true, been approved by a number of decisions, Smyth v. Ames (1898) 169 US 466, 42 L ed 819, 18 S Ct 418, and a long line of cases following. In each of these cases, however, the court has carefully pointed out that it is one of the many factors that may be considered in arriving at a proper rate base. The cost of reproduction is a calculation designed to produce a figure equal to the cost of replacing the existing property new. There are several reasons why the premise on this theory does not meet the purpose for which it was formulated."

Then follows a statement by the Commission of a number of alleged justifications for its determination to ignore established legal principles by abandoning the beaten track of the Federal and state decisions, blazing a new trail and setting up in this case its conception of the proper method of ascertaining and determining the basic figure upon which to calculate the return the owners of a utility are entitled to receive for furnishing service to the public.

Physical Property

On December 24, 1929, the Public Service Commission directed respondent to furnish the complainants with an inventory of its property, which was promptly done. This inventory was the basis of respondent's reproduction cost estimates, but it was not used by Mr. Davis; he used a different one, made largely by two assistants, Francis A. Johnson and Fred D. Sayer, neither of whom, counsel for the Commission say (brief p. 34), "had had previous experience in evaluating the property of an electric utility, and the methods employed by these men in counting and estimating the various units of property such as poles and fixtures, conductors, transformers, and similar items were so slipshod and inaccurate as to give rise to a very substantial doubt as to their accuracy." These three estimates were placed in evidence during the early hearings of the case and were all made as of August 31, 1931.

In its order of June 8, 1937, the Public Utility Commission directed that "Using the estimates of reproduction cost new and depreciated, now of record, both principal parties . . . submit [on June 30, 1937] revised estimates thereof, in the same form, [1] trended from the date of the original appraisal, August 31, 1931, to June 1, 1937; . . . [2] trended from the date of the revised appraisal, December 31, 1935, to June 1, 1937; with consequent adjustments of overhead allowances."

It was in obedience to these directions that respondent submitted its revised estimates of reproduction cost, new and depreciated, trended to June 1, 1937, including net additions to its property. The trend factors were agreed upon at an engineering conference with the engineers of the Commission. The estimates of its witnesses, Dreyfus and Scharff, as to physical property of the respondent follow:

Reproduction Cost Estimate of Physical Property by Edwin D. Dreyfus: [Table omitted shows reproduction cost depreciated $188,603.]

Reproduction Cost Estimate of

Physical Property by Maurice R. Scharff: [Table omitted shows reproduction cost depreciated $177,858.]

The reproduction cost estimate of Daniel E. Davis, put in evidence by the complainants, is not made up under the twenty-one account number items and titles used by the engineers for respondent, but for present purposes we may use complainants' Exhibit No. 1 (1937 Series) Vol. XIII, p. 6005a, trended from August 31, 1931, to June 1, 1937.

It does not include additions to the plant since August 31, 1931, amounting to $11,825.

Item	Reproduction Cost New	Accrued Depreciation	Cost New Depreciated
Power Plant and Equipment	$73,009	$66,823	$6,186
Distribution System	116,710	47,270	69,440
	$189,719	$114,093	$75,626

The details of the above figures under the item "Power Plan and Equipment" are as follows: [Table omitted.]

It is apparent from an inspection of the Dreyfus and Scharff appraisals of the physical property of respondent that the differences in the results reached by them are not sufficient to justify a detailed analysis of the items in which they occur. It will be more profitable to compare the estimate of complainants' engineer, Davis, with the Dreyfus appraisal.

[2] The controversy between the parties upon the question whether the "gas generating station" of appellant is used or useful in rendering service to the public is sharply reflected in the Dreyfus and Davis appraisals. From the inception of the service down to September 17, 1928, appellant generated all its current at its own plant, but on that date entered into a contract to purchase its requirements from Pennsylvania Electric Company. In ascertaining "the book cost of fixed capital" as of May 31, 1937, the Commission remarked: "The Commission concludes from the record in this case that the gas engine generating plant is not used or useful as an emergency, standby or reserve plant and we, therefore, exclude the gas engines, generators, and auxiliary equipment as being property not used or useful in the public service."

In this connection the Commission made a tabulation of the book cost of the gas power generating plant as of May 31, 1937, under account numbers and titles comparable with the numbers and titles in the reproduction estimates. The following is a comparison of the Commission's book cost estimate with the Dreyfus depreciated reproduction cost appraisal:

Acct. No.	Commission Account Title	Commission Amount	Dreyfus Amount
227	Land	$1,000.00	$800.00
229	Power Plant Structures	3,500.00	10,681.00
232	Gas Engines	36,153.97	
233	Electric Generators	13,823.18	40,348.00
234	Other Elec. Equip.	5,361.58	7,608.00
236	Other Power Plant Equipment	209.50	691.00
		$60,048.23	$60,128.00

Pursuant to its above-quoted finding the Commission in its determination of a rate base "allowed the full cost of land and building to remain in fixed capital," but "excluded the last four items noted above in the amount of $55,548.23."

A comparison of reproduction cost new estimates of Davis and Dreyfus

of the items here involved may be thus stated:

	Davis	Dreyfus
Land and Building ...	$9,523.00	$15,041.00
Equipment	63,486.00	73,146.00
	$73,009.00	$88,187.00

These tabulations indicate that it makes little practical difference whether the book cost or the depreciated reproduction cost basis be adopted in disposing of the controversy relative to the power plant. The Commission excludes all the equipment, valued by it at $55,548, and Davis allows only a junk value of $2,650 out of his appraisement of $63,486, or an elimination of $60,836.

The reason assigned by Davis for including only the salvage value of the equipment was set forth in the above-quoted note to his estimate, "Salvage value only, due to fact that duplicate transmission lines, serving borough, render generating plant unnecessary."

There is competent engineering testimony upon the record to the contrary. P. J. Morrissey testified: "The transmission was adequate as a standby with the gas engine plant. The gas engine plant was a standby on the transmission line, whichever one could be used as the prime source of power."

Scharff testified: "In my opinion, the company not only should not be required to remove its plant, *but should not be permitted to remove it,* if it wished to do so, until the supply to Brookville is made to correspond with modern plants, applicable to a community of this importance, which would require an additional transmission line,[3] from a separate source of power there, in addition to this 6,700-volt substation or the generating station, such transmission line to run through its entire length onto the pole line independent of the other line supplying the town, and also until the substation at Brookville is provided with at least one spare transformer; and until those conditions are realized, representing the minimum requirement for dependable supply on transmission lines into a community of the size of Brookville, the company should be required to maintain its generating equipment in readiness for service to meet the requirements in case of an interruption, due either to the Timblin substation going out of service, or the present transmission lines going out of service, or the Brookville substation going out of service, or a single transformer in Brookville substation going out of service."

Upon an examination of the testimony we are of opinion that the equipment of the power plant should not be included in an estimate of reproduction cost at the figures appearing in the estimates of Messrs. Dreyfus and Scharff, but we are also of opinion that the portion of the order which totally excludes that equipment lacks evidence to support it. The plant, including the equipment, should be included in any estimate of reproduction cost at a figure representative of its value as an emergency, standby, or reserve plant. Although not a part of

[3] Speaking of this pole line, we said in Penn Pub. Service Corp. v. Public Service Commission (1926) 88 Pa Super Ct 369, 371: "Moreover the plan made necessary the erection of a power line about 22 miles long from the nearest point in the Penn Public Service Corporation's system. This it was estimated would cost $88,000, and there were estimated additional costs amounting to about $6,000."

the record at the time the testimony was closed, there is attached to and made a part of respondent's exceptions to the order nisi the affidavits of W. C. Sontum, superintendent of Pennsylvania Electric Company, and W. J. Utts, vice president of respondent, to the effect that the plant was actually used on April 6, 7, 8, and 9, 1938, when the transmission lines referred to by Davis and in the testimony were put out of service by a severe sleet storm, rendering it necessary to put respondent's power plant in service on April 8th and 9th for more than twelve hours on each day, during which it carried respondent's peak load consisting of 400 kilowatts.

Our conclusion is that the equipment should be included at 50 per cent of its depreciated reproduction cost as estimated by Messrs. Dreyfus and Scharff. This means that the Dreyfus total estimate of $188,603 must be reduced by one-half of $48,647 (equipment items) or $24,324, making a net of $164,279. In the same way the Scharff total estimate of $177,858 must be reduced by one-half of $48,706, making a net of $153,505.

If in lieu of the salvage value of $2,650, stated by Davis, there be substituted a similar estimate of $24,000 for the equipment, his estimate of depreciated reproduction cost of physical property would be approximately $97,000 plus $11,825, or $108,825.

[3, 4] We are of opinion that the order here appealed from, based, as it is, solely upon the Commission's finding of the "original cost of fixed capital installed at May 31, 1937," and without giving any consideration whatever to the "reproduction cost" of the property as one of the factors to be taken into account in ascertaining its present "fair value," constitutes an "error of law" as that phrase is used in § 1107 of Art. XI of the Statute of 1937, 66 PS § 1437, particularly where the appellant alleges confiscation.

From Smyth v. Ames (1898) 169 US 466, 42 L ed 819, 18 S Ct 418, down to and including California R. Commission v. Pacific Gas & E. Co. (1938) 302 US 388, 82 L ed 319, 21 PUR(NS) 480, 58 S Ct 334, and throughout the decisions of our supreme court and of this court, the cost of reproducing the property has consistently been held to be not only a relevant but also an essential element in the ascertainment of its "fair value" for rate-making purposes.

In St. Louis & O'Fallon R. Co. v. United States, 279 US 461, 484, 73 L ed 798, PUR1929C 161, 49 S Ct 384, Mr. Justice McReynolds stated:

"'The elements of value recognized by the law of the land for rate-making purposes' have been pointed out many times by this court. Smyth v. Ames (1898) 169 US 466, 42 L ed 819, 18 S Ct 418; Willcox v. Consolidated Gas Co. (1909) 212 US 19, 53 L ed 382, 29 S Ct 192, 48 LRA(NS) 1134, 15 Ann Cas 1034; Minnesota Rate Cases (1913) 230 US 352, 57 L ed 1511, 33 S Ct 729, 48 LRA(NS) 1151, Ann Cas 1916A 18; Missouri ex rel. Southwestern Bell Teleph. Co. v. Public Service Commission, 262 US 276, 67 L ed 981, PUR1923C 193, 43 S Ct 544, 31 ALR 807; Bluefield Water Works & Improv. Co. v. West Virginia Pub. Service Commission, 262 US 679, 67 L ed 1176, PUR 1923D 11, 43 S Ct 675; McCardle v. Indianapolis Water Co. (1926)

272 US 400, 71 L ed 316, PUR1927A 15, 47 S Ct 144. Among them is the present cost of construction or reproduction. Thirty years ago, Smyth v. Ames, *supra,* 169 US at pp. 546, 547, announced:

"'We hold, however, that the basis of all calculations as to the reasonableness of rates to be charged by a corporation maintaining a highway under legislative sanction must be the fair value of the property being used by it for the convenience of the public. And in order to ascertain that value, the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses, are all matters for consideration, and are to be given such weight as may be just and right in each case. We do not say that there may not be other matters to be regarded in estimating the value of the property. What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience.' . . .

"In Missouri ex rel. Southwestern Bell Teleph. Co. v. Public Service Commission, *supra,* at p. 287 of 262 US, PUR1923C at p. 199, we said: 'It is impossible to ascertain what will amount to a fair return upon properties devoted to public service without giving consideration to the cost of labor, supplies, etc., at the time the investigation is made. An honest and intelligent forecast of probable future values made upon a view of all the relevant circumstances, is essential. If the highly important element of present cost is wholly disregarded such a forecast becomes impossible. Estimates for tomorrow cannot ignore prices of today.' The doctrine above stated has been consistently adhered to by this court."

In the following cases the Supreme Court of the United States reversed the order of the fact-finding body as confiscatory because of the failure of the respective Commissions to give due consideration to reproduction cost as an element in determining fair value: Bluefield Water Works & Improv. Co. v. West Virginia Pub. Service Commission, *supra;* Missouri ex rel. Southwestern Bell Teleph. Co. v. Public Service Commission, *supra;* and St. Louis & O'Fallon R. Co. v. United States, *supra.*

The case of California R. Commission v. Pacific Gas & E. Co. *supra,* does not change the rule so clearly established and followed up to the date of that decision, January 3, 1938. It was an appeal by the state Commission from an order of a district court enjoining gas rates fixed by the Commission. The Commission, in arriving at a "rate base," considered only historical cost and as to reproduction cost said (302 US at p. 397, 21 PUR (NS) at p. 486): "The estimates of cost to reproduce are not at all convincing and cannot be of positive value in this proceeding." The Supreme Court of the United States held that since the Commission received estimates of reproduction cost, the rejection by the Commission of such evidence in arriving at a rate base which was reasonable was not a denial of *procedural* due process.

The case was reversed and sent back to the district court to pass on the question of confiscation. That court in an opinion by Wilbur, C. J. (Pacific Gas & E. Co. v. California R. Commission (1938) 26 F Supp 507, 26 PUR(NS) 1, 5, considered the question of confiscation, and after making its own findings of fact, taking into account both the Commission's report based on historical cost only, and the special master's report based solely on reproduction cost new, concluded there had been no confiscation. In the course of the opinion it was said (26 F Supp at p. 511): "The decisions of the Supreme Court are uniform to the effect that both these elements should be considered in arriving at the fair value of the property." Clearly, the Pacific Gas & Electric Case, as considered by the Supreme Court, does not hold or suggest that Smyth v. Ames, *supra*, is no longer applicable to cases where the reviewing court is passing upon the question of confiscation.

The supreme court of Pennsylvania and this court have consistently followed the rule of Smyth v. Ames, *supra*, in the valuation of the property of public utilities. In Erie v. Public Service Commission, 278 Pa 512, PUR1924D 89, 94, 123 Atl 471, 475, Justice Kephart pointed out that "the value of private property used in public service and affected with a public interest is to be determined at the time of the inquiry or investigation regarding rates," and after citing the decisions of the Supreme Court of the United States, to which we have already referred, held that although original cost is to be considered in fixing the present value for rate-making purposes it cannot be used as a "substitute for value." See also the full discussion on the subject by this court in Bangor Water Co. v. Public Service Commission (1923) 82 Pa Super Ct 48.

Reference is made in the briefs to the recent case of Driscoll v. Edison Light & P. Co. 307 US 104, 83 L ed 1134, 28 PUR(NS) 65, 70, 59 S Ct 715, 719, decided April 17, 1939, in which the Supreme Court of the United States sustained as constitutional an order of the present state Commission prescribing temporary rates under § 310 of Art. III of the Statute of 1937, 66 P.S. § 1150. It is significant to note that, although the statute refers only to "original cost, less accrued depreciation, of the physical property," one of the grounds upon which the Supreme Court based its decision was that our state Commission had in fact given consideration to all the relevant factors, including reproduction cost, in arriving at fair value as a basis for temporary rates. In his opinion, Mr. Justice Reed, speaking for the court, said: "The Commission, however, did not confine itself to that one element [original cost, less accrued depreciation] in setting the fair value of the appellee's property, for the purpose of temporary rates, at $5,250,000. It gave weight to reproduction cost, original cost, going concern value and the necessity for working capital, and it allowed on this rate base a return of more than 6 per cent." The decision of the court in that case, in effect, constituted a reaffirmation of the rule laid down in Smyth v. Ames (1898) 169 US 466, 42 L ed 819, 18 S Ct 418, and upheld the order of the Commission because "the Commission based the order now under

review on evidence requisite under that rule." This was recognized and criticized by Mr. Justice Frankfurter in his concurring opinion, *supra,* 307 US at p. 122.

It is equally significant that in the present case the Commission, in fixing the temporary rates prescribed by its interim order of October 5, 1937 (20 PUR(NS) 398, 402), expressly stated that the "estimates of reproduction cost new, less accrued depreciation," were set forth "to demonstrate the basis of our determination of our tentative calculation of the fair value of the property of respondent for the purpose of this interim order."

One of the grounds upon which the Commission attempted to justify its refusal to give any consideration to the estimates of reproduction cost in fixing the final rates here in question was that they varied materially from each other. It would be difficult to conceive of a case in which there would not be material variations in the estimates of the engineers for the respective parties. In the Scranton-Spring Brook Water Company Cases the estimates of the engineers for the complainants and respondents, respectively, were over twenty million dollars apart—see 105 Pa Super Ct 203, 212, 213, PUR1932C 471, 160 Atl 230—and yet a fair and reasonable valuation was eventually arrived at. The estimates in this case were originally prepared, and subsequently trended, by the express direction of the Commission. It has at its disposal a large corps of engineers and accountants and it is one of its functions to investigate and test the accuracy of the appraisals of the engineers for the parties, the unit prices and labor costs used by each, and determine for itself a reasonable reproduction cost of the property.

In their discussion of the several appraisal estimates, counsel for the Commission, after criticizing the Davis appraisal as already quoted, continued,

"In making an inventory of the power house it does not appear that the contractor who made the estimate for Mr. Davis proceeded with sufficient thoroughness to ascertain the depth or width of the foundation, either of the structure or the engines. The testimony with regard to the classification of poles for the purpose of acertaining depreciation is so theoretical and hypothetical as to be worthless. An extended quotation from that testimony and a discussion thereof is found in appellant's brief at pp. 185–216. As regards the amount of wire used in respondent's system, Mr. Davis and Mr. Johnson made frequent admissions of miscalculations and failure to make proper allowances, so that their estimates are open to serious question. . . .

"On the subject of accrued depreciation, it appeared to the Commission that complainants' witnesses had relied mainly on installation dates and theoretical formulae to compute expired life, and had not carefully and scrupulously related their calculation to the actual condition of the property. An estimate of accrued depreciation having such a basic defect is untrustworthy and misleading and must be rejected: Cheltenham & A. Sewerage Co. v. Public Service Commission (1936) 122 Pa Super Ct 252, 270, 15 PUR(NS) 99, 186 Atl 149; Pennsylvania Power & Light Co. v. Public

Service Commission (1937) 128 Pa Super Ct 195, 211, 19 PUR(NS) 433, 193 Atl 427."

[5–7] It is self-evident that no reliance can be placed on an appraisal estimate where the inventory on which it is based is incorrect or incomplete or vitally deficient; such defects are almost impossible of correction; but where differences appear in the valuations put on correct inventories, they can be adjusted and a fair and reasonable valuation be arrived at. The differences in the respondent's engineers' appraisal estimates, as pointed out by counsel for the Commission, were chiefly of this type—(1) ignorance or disregard of local labor costs; (2) accrued depreciation; and (3) percentages allowed for overheads, referred to under a later head. These were matters that could be corrected and scaled down by the Commission and its engineering force, and were wholly different from the defects in the complainants' appraisal pointed out in the Commission's brief. The incurable defects in the latter furnish no reason for wholly disregarding the estimates of the respondent's engineers, prepared as directed by the Commission and based on an inventory not seriously questioned.

Furthermore, from the very helpful argument of Mr. Wilson, present counsel for the borough of Brookville, it appeared that where the estimates of the respective engineers related to items as to which there was no real dispute, the variation between them was not greater than would ordinarily be expected—they were in comparative agreement as to many items.

We find no indication in our new Public Utility Law that the legislature by its enactment intended to authorize the Commission, as its agent, to discard, when ascertaining and fixing the fair value of the property of a utility, any or all of the established elements of fair value. No matter what economic theories the Commission may have evolved to its own entire satisfaction, or how firmly it may be convinced that its predecessors and all the courts have, in its own language, "failed to perceive the problem" from the proper point of view, it is still the duty of the Commission, and our duty, to "apply the law of the land to facts developed of record," until that law has been changed in a constitutional manner.

By § 1005 of Art. X of the Statutes of 1937, 66 PS § 1395, the Commission is charged with the duty of making findings "in sufficient detail to enable the court on appeal, to determine the controverted question presented by the proceeding, and whether proper weight was given to the evidence."

The Commission having given *no* weight to the evidence of reproduction cost, and having made no findings relative to that cost, it becomes our duty to reverse the final order (Missouri ex rel. Southwestern Bell Teleph. Co. v. Public Service Commission, *supra;* St. Louis & O'Fallon R. Co. v. United States, *supra*) because it is based upon an error of law.

[8, 9] Thus far we have discussed the Commission's report on the basis of its assumption that the total book cost of fixed capital as reflected on the books of the respondent on May 31, 1937, $197,516.70, represented the actual original cost thereof, from which, in arriving at the "rate base," the Commission deducted the amount

invested in the generating plant, etc., as no longer used and useful. We are, however, of the opinion that the assumption is untenable and that the total book cost of fixed capital as reflected on the books of the respondent has not been sufficiently proved to be the original cost to justify its use as the rate base. It is admitted that no books were kept by the corporation from the date of its incorporation, January 20, 1897, to March 31, 1914, and from that date to 1925 we find that they were not kept in the manner directed by the Public Service Commission, and cannot be relied upon to show accurately the investment in the plant. In those cases in which we have discussed and upheld the use of original cost less depreciation as the measure of present value—see Clark's Ferry Bridge Co. v. Public Service Commission, 108 Pa Super Ct 49, 59–61, PUR1933D 173, 165 Atl 261, affirmed (1934) 291 US 227, 78 L ed 767, 2 PUR(NS) 225, 54 S Ct 427; and the valuation of the Watres-Gardner's Creek Line and Plymouth tunnel in Scranton-Spring Brook Water Service Co. v. Public Service Commission (1935) 119 Pa Super Ct 117, 130, 14 PUR(NS) 73, 181 Atl 77; and similar cases—the cost could be determined accurately and beyond peradventure by the books of the company. That is not the case here. Entries made upon the books many years afterwards intended to bring them into relative approximation with the financial condition of the company cannot be used as an accurate determination of cost, such as will form the exclusive basis for fixing the present value of the plant. The evidence shows no declaration or distribution of *cash* dividends from January 20, 1897, until 1916, a period of nineteen years, when $2,000 was paid. From 1916 to 1924, $3,600 more was paid out in cash dividends; and from 1924 to 1927, $5,250 was paid in cash dividends. We take no account of *stock* dividends, for they do not increase or diminish the cash investment in the plant.

The Commission and the counsel for the complainants—appellants in No. 183, April Term, 1939—have apparently wholly overlooked the compounding effect of plowing back profits into the business. To take a supposititious case, if a corporation with $10,000 paid in capital is successful from the start, that is—as complainants contend is the fact in this case—has no lag in business such as to justify a special allowance for going concern value, and makes an annual and continuous profit of 8 per cent on the money invested, but pays out nothing in dividends, putting back all its earnings, as soon as realized, into the business, at the end of nine years its plant will have invested not $17,200 but $20,000; and at the end of eighteen years, it will have invested not $24,400, but $40,000. By plowing back its earnings at 8 per cent per annum, the original investment doubles in nine years and quadruples in eighteen years. And at the end of eighteen years it cannot truly be said to have earned on its investment an annual profit of $16\frac{2}{3}$ per cent ($30,000 divided by 18=$1667: $16\frac{2}{3}$ per cent on $10,000) but only 8 per cent, because all the earnings were put back into the plant and immediately formed part of the invested capital, which was earning 8 per cent per annum.

It was this oversight which contrib-

uted in large degree to the extravagant figures presented by counsel for the complainants in their briefs and at the argument as to the rate of interest earned by respondent.

[10] Following the example of the Supreme Court of the United States in West v. Chesapeake & P. Teleph. Co. (1935) 295 US 662, 79 L ed 1640, 8 PUR(NS) 433, 55 S Ct 894, where the state Commission used a faulty and erroneous method of valuation, we might, without more, return the record to the Commission to determine a rate base upon correct principles (295 US at p. 679); but both interested parties have asked us not to increase further this already swollen record and, if possible, to fix the fair value of the respondent's property, used and useful in the public service, using our own independent judgment upon a review of the evidence now in the record. We are unwilling to establish a course of action or precedent in this regard, but, we have done it in exceptional circumstances in the past—see, inter alia, Beaver Valley Water Co. v. Public Service Commission (1921) 76 Pa Super Ct 255, affirmed (1921) 271 Pa 358, 114 Atl 373; Bangor Water Co. v. Public Service Commission (1923) 82 Pa Super Ct 48; and to a limited extent, Scranton-Spring Brook Water Service Co. v. Public Service Commission, *supra*—and in the circumstances here present, will do it in this case.

[11] The provisions of the Act of June 12, 1931, P.L. 530, amending § 22 of the Public Service Company Law of 1913, 66 PS § 836, that in every appeal taken involving a question of the reasonableness of rates, whether taken by a complainant or by a public service company, it shall be the duty of the court to consider the entire record of the proceedings before the Commission and on its own independent judgment to determine whether or not the findings made and the valuations and rates fixed by the Commission are reasonable and proper; and that if the court shall determine that the findings or the valuations are unreasonable it shall remit the case to the Commission with directions to reform the findings, valuations, and rates in accordance with the court's opinion; were not reënacted or included in the Public Utility Law of 1937. Hence the situation in these respects remains the same as it was before the approval of the Act of June 12, 1931, *supra,* and as laid down by the Supreme Court of the United States in Ohio Valley Water Co. v. Ben Avon, 253 US 287, 64 L ed 908, PUR1920E 814, 40 S Ct 527, as construed by our Supreme Court in Ben Avon v. Ohio Valley Water Co. 271 Pa 346, PUR 1921E 471, 114 Atl 369, and Public Service Commission v. Beaver Valley Water Co. *supra,* and interpreted by this court in Lewistown v. Public Service Commission (1923) 80 Pa Super Ct 528, 529, 533, 534, where we held that the duty of this court to exercise its own independent judgment as to both law and facts was limited to cases where the utility claimed that confiscation of its property would result from the enforcement of the Commission's order, as is the case here.

The average of the estimates of cost of reproducing the physical property, without considering the overhead expenses, of Dreyfus and Scharff, as adjusted upon the basis of 50 per cent of the depreciated cost of the equip-

ment in the power plant is $158,892. This we think is too high. The average of the estimates of Dreyfus, Scharff, and Davis similarly adjusted is $138,261, which we are satisfied is too low. Our best independent judgment as to the reproduction cost depreciated, of the physical property, exclusive of overhead expenses and intangibles, is approximately $150,000. We are also of opinion that the working capital allowance, which includes supplies and materials on hand, made by the Commission is too low. We are of opinion that a working capital allowance of $11,000 ($7,000 for cash and $4,000 for materials) should be made.

Overheads and Intangibles Involved in Fixing Rate Base

We come then to the question of allowance for overhead expenses and intangibles in reproduction cost valuation. These items have been recognized by courts and Commissions as definite elements of value and have been held to include omissions and contingencies, preliminary organization expense, the engineering and administrative expense of creating the plant, cost of financing, and going concern value. While these categories are not precisely separated and sometimes overlap, thus leading to confusion, they nevertheless form the best practical method of approach that has been suggested. Since the Commission did not give any weight to reproduction cost it disregarded these elements. However, in its report it did discuss cost of financing and going concern value concluding that in no event was the respondent entitled to an allowance on account of these two items. This makes necessary some discussion of the subject by this court.

Omissions and Contingencies

[**12, 13**] Dreyfus and Scharff, called by the respondent, allowed 3 per cent on their valuations of physical property, that is $6,000 and $5,600, respectively, for omissions and contingencies, while Davis, the complainants' witness, grouped this item with engineering (fixed by the other engineers at 5 per cent) and allowed 8 per cent for both. So all the engineers are in practical agreement on this item. It has been generally recognized that when estimates are made of reproduction costs of a public utility or even the cost of an ordinary construction about to be made, there are bound to be omissions, and that situations will arise which are not apparent at the time or are liable to be overlooked. The courts and Commissions generally have followed the business practice and made allowance on that account. Prudent contractors in bidding protect themselves by such allowances and we know of no reason why a different rule should be applied here merely because it is a utility which is affected. We are of the opinion that these items must be considered, but that in arriving at a proper percentage the rate should be applied to the physical property alone. In other words, we see no reason for making an allowance on this account for mistakes in amount of working capital or any of the intangibles. We find 3 per cent on the physical property to be a fair allowance for omissions and contingencies.

Preliminary Organization Expense

[14, 15] It is not open to argument that there is a period between the initiation of an undertaking to furnish public service and the time of completion of the plant ready to deliver service, when no revenues are forthcoming. Capital must be provided in advance and be unproductive for a period while taxes, interest, and insurance are accumulating. A franchise and charter are usually essential and the securing of these entails legal and other expenses. The utility is entitled to capitalize such preliminary expense.

In Ohio Utilities Co. v. Public Utilities Commission, 267 US 359, 362, 69 L ed 656, PUR1925C 599, 601, 45 S Ct 259, it was said: "Reproduction value, however, is not a matter of outlay, but of estimate, and should include a reasonable allowance for organization and other overhead charges that necessarily would be incurred in reproducing the utility. In estimating what reasonably would be required for such purposes, proof of actual expenditures originally made, while it would be helpful, is not indispensable." That a sum should be allowed on this account we have never heard seriously questioned. Disputes frequently have arisen as to the amount of such allowance. Here the experts are practically agreed. While the sums that they named differed in amount, all agreed that 1.5 per cent would be fair and the figures varied only on account of the valuation on which the percentage was calculated. We are of the opinion that an allowance of 1.5 per cent should be made on this account.

Preliminary Engineering and Administration Expenses

[16] That the Commission deprived the utility of a reasonable return on the fair value of its property dedicated to a public use is demonstrated by its failure to take into account in fixing fair value the claim of the utility for an allowance for those engineering and administration expenses incurred before such property is ready for service. This was due to the Commission's relying exclusively on cost disclosed by such books as were available. Strictly speaking, the engineering and administration expenses incident to the construction of the physical part of a plant enter into the cost of the plant just the same as the amounts paid to bricklayers and carpenters or for materials. To refuse to take such an item into account is to ignore universally accepted business standards and experience. It would be more foolhardy to construct an electric light plant without plans, specifications and expert superintendence than to so erect a dwelling or office building.

In addition, an organization must be maintained to represent the stockholders during the period of construction, to provide for the payment of expenses and oversee construction on behalf of such stockholders. A staff must also be gathered together ready to function when the plant is completed. There was abundant testimony in the record from which it could only be concluded that there were here items contributing to the fair value of the property. To disallow all claims on this account amounted to confiscation. However, such expenses are not to be

confused with those which are usually considered in the category of going concern value. Dreyfus allowed 12.55 per cent as the aggregate of these items, divided, engineering 5.22 per cent, administration 2.08 per cent, legal 1 per cent, interest, taxes, etc., during construction 3.25 per cent. Scharff allowed 11 per cent made up of engineering 5 per cent, administration and legal 3 per cent, interest and taxes during construction 3 per cent. Davis allowed 9 per cent made up of engineering 5 per cent (deducting 3 per cent for omissions and contingencies from 8 per cent for all three items), administration 1½ per cent, interest, taxes, etc., during construction 2½ per cent. We find that 10 per cent is a fair aggregate allowance for these items combined.

Cost of Financing

[17–22] The respondent's witness, Dreyfus, allowed $11,280 under the head of cost of financing, and its witness, Scharff, $13,000. These figures were reached by allowing a percentage of all the capital required; Dreyfus adopted a rate of 5.11 per cent, Scharff 6 per cent. While complainants' witness, Davis, made no allowance, it appeared that his firm in the case of a utility of about the same size in an adjoining county, had suggested 5 per cent as a fair return. The respondent financed its operations by the sale of common stock and borrowing. It borrowed $4,750 from stockholders, $7,000 from a bank and $74,528.64 from affiliated companies, some of which loans were temporary and have been repaid. The company also funded a portion of its debt by issuing bonds in the sum of $35,000, which were taken by an affiliated company at par. The Commission refused to allow anything on this account, assigning as a reason that there was no evidence that the company had paid any brokerage fees. As we are not in accord with the views of the Commission as expressed in its opinion or the views of the complainants or respondent as stated in their briefs, it is necessary to consider this matter in some detail, believing that the experts made a mistake in their methods of approach and the Commission in its legal conclusions.

We take it to be settled that when reproduction cost is considered as it must be in determining present fair value, some allowance should be made under the head of cost of financing. In Erie v. Public Service Commission, 96 Pa Super Ct 42, 51, PUR1929C 568, 575, we said: "When evidence of *original cost* is introduced as a factor in determining present fair value it is obviously quite proper to consider the actual experience of the company in the matter of the cost of obtaining money, and in such cases it has been held consistently that mere theoretical or hypothetical costs of this nature are not to be included. Cost of financing is however an element of value to be considered in a *reproduction cost* estimate. It is a definite item of cost and, by the introduction of the testimony of witnesses familiar with the cost of issuing and marketing securities, it should be possible to determine it with substantial accuracy" (Italics supplied.) See, also, Ben Avon v. Ohio Valley Water Co. 271 Pa 346, 356, PUR1921E 471, 114 Atl 369, and Chambersburg Gas Co. v. Public Service Commission (1935)

116 Pa Super Ct 196, 219, 7 PUR (NS) 359, 176 Atl 794.

The items of intangible values which may be included under the head of cost of financing comprehend brokerage fees and the mechanical costs of issuing the securities, such as cost of preparing, engraving, printing, registering, and distributing bonds, cost of preparing and recording mortgages and other documents, trustees' and counsel fees and expenses connected with the issuing of securities so as to comply with the security laws enacted for the protection of the investing public. There may not be included the interest or discount paid to the purchaser of the security for the use of the money. A utility which devotes its property to a semi-public service undertakes to supply all the capital necessary for the efficient execution of the plan. It is compensated for this service by an allowance of a reasonable net return described in utility law as fair rate of return. It may not be compensated twice for the same service. Cheltenham & A. Sewerage Co. v. Public Service Commission, 122 Pa Super Ct 252, 261, 15 PUR(NS) 99, 186 Atl 149.

The utility may supply all of the required capital without resort to borrowing or it may itself supply part of the capital and borrow the balance, sometimes hypothecating the property as security for the loan. In the latter case, the utility in effect guarantees the loan and takes the greater risk. The loan is usually made at a lower rate than the utility receives as an allowable net return. The ratio of the amount of the loan to the value of the security, amount of bonds to total security, determines, within limits, the amount of the brokerage fee as well as the rate of interest paid for the loan.

It is apparent that this item of cost of financing has a direct relation to the allowable net return. In fixing fair value and rate of return experience has demonstrated that owing to the complexities of modern business resort must be had to tested methods before a safe and satisfactory answer can be obtained. The practice of financing public utility operations by borrowing in part has become so general and has come to have such a direct relation to fixing the rate which persons demand and should receive for furnishing capital that Commissions and courts have found that by recognizing the actual transactions as they are carried out a more accurate and fairer solution can be obtained. For this reason, it has been the almost universal practice to give separate consideration to cost of financing. As we are concerned here with the question of confiscation, the final question is whether the utility has received due compensation for the use of its property. Intangible values allowed above bare physical value are frequently comprehended under different categories and we must take such fact into consideration before we can say that there is confiscation. Los Angeles Gas & E. Corp. v. California R. Commission, 289 US 287, 313, 77 L ed 1180, PUR1933C 229, 53 S Ct 637; Dayton Power & Light Co. v. Ohio Pub. Utilities Commission (1934) 292 US 290, 78 L ed 1267, 3 PUR (NS) 279, 54 S Ct 647; Columbus Gas & Fuel Co. v. Ohio Pub. Utilities Commission (1934) 292 US 398, 78

L ed 1327, 4 PUR(NS) 152, 54 S Ct 763, 91 ALR 1403.

We cannot agree with the contention of the respondent that it is entitled to capitalize the expense of marketing the stock of the company. It would confuse rather than simplify the process of rate making to treat the expense of marketing the common stock of the utility as cost of financing. That subject may better be considered under a different head. The expenses incident to the issuing of common stock are naturally items to be properly treated under the heading of preliminary or organization expense, while the marketing of the stock is a matter between the original subscriber for the stock of the company and any person to whom he may sell. We are of the opinion, therefore, as we have before indicated, that the cost of marketing the stock of the company is not a matter for capitalization as part of the rate base. The utility is compensated for the capital furnished by it in the fair return allowed.

The fact that the utility did not actually pay brokerage fees does not prevent the inclusion of a fair amount on this account. Ben Avon v. Ohio Valley Water Co. *supra*. We find that 3 per cent is a fair allowance for this item. Cf. Chambersburg Gas Co. v. Public Service Commission, *supra;* Scranton-Spring Brook Water Service Co. v. Public Service Commission (1935) 119 Pa Super Ct 117, 137, 14 PUR(NS) 73, 181 Atl 77.

Going Concern Value

[23–25] We have heretofore had occasion to discuss going concern value in numerous cases wherein we have reviewed the Federal and state authorities. We call particular attention to Beaver Valley Water Co. v. Public Service Commission (1921) 76 Pa Super Ct 255, 269; Chambersburg Gas Co. v. Public Service Commission, *supra,* 116 Pa Super Ct at p. 210; Cheltenham & A. Sewerage Co. v. Public Service Commission, *supra,* 122 Pa Super Ct at p. 264; Scranton-Spring Brook Water Service Co. v. Public Service Commission, 105 Pa Super Ct 203, 220, PUR1932C, 471, 160 Atl 230. We will not repeat in any detail what was there said but rather apply our former conclusions to the facts in this case.

It is implicit in the Federal cases, as well as our own, that "there is a difference between even the cost of duplication, less depreciation, of the elements making up the plant and the commercial value of the business as a going concern"; that an assembled and established plant, doing business and capable of earning a fair return, has a value in excess of the component parts considered separately at their cost; and that this element of value is a property right which should be considered in determining the present value of the plant. On the other hand, the company by receiving a prompt and fair return on its investment may have been compensated in that form for this property right.

This element of value is readily recognizable in at least two forms. At times it is represented by the value that arises from the development of a force of trained employees skilled in performance of the service rendered by the utility. Again, it appears where the utility has made a prudent investment but there is a lag in fair return before the public has appreciated and

taken advantage of the service offered and made a return therefor. The extent of this value is difficult to determine and cannot be defined with exact accuracy.

In this connection it is helpful to refer to certain conditions where losses or expenditures are not entitled to be capitalized for rate-making purposes. It does not depend entirely upon deficits of operation for in some cases the investment may not have been prudent, and to allow such value would be merely to capitalize past losses. Hanover v. Hanover Sewer Co. (1915) 251 Pa 95, 100, PUR1916C 122, 96 Atl 132. The mere fact that the plant has been operated at a loss is not sufficient to permit such deficits to be added to the base on which the rate is reckoned. Knoxville v. Knoxville Water Co. (1909) 212 US 1, 14, 53 L ed 371, 29 S Ct 148; Galveston Electric Co. v. Galveston, 258 US 388, 66 L ed 678, PUR1922D 159, 42 S Ct 351. Where there has not been a lag in earnings there is no reason why there should be any special allowance on this account for there has not been a loss.

[26–28] The respondent's expert, Dreyfus, attempted to support a claim for $25,000 and its expert, Scharff, a claim for $18,000, for going concern value. The complainants' expert, Davis, allowed nothing on this account, but admitted that it was common practice to allow 10 per cent of present value. The Commission allowed nothing. The testimony of the company's engineers was based wholly on theoretical lag and was therefore insufficient to support its claim. Scranton-Spring Brook Water Service Co. v. Public Service Commission, *supra*, 119 Pa Super Ct at p. 139. A claim on this account, when allowed, must be supported by evidence of actual lag, not necessarily from the books of the company. Cheltenham & A. Sewerage Co. v. Public Service Commission, *supra*, 122 Pa Super Ct at p. 266. The experts, in place of considering the history of the respondent, relied upon the fact that in many rate cases an allowance of 10 per cent of present value was made. They failed to show that they had taken into account or considered the extent to which incoming revenues kept pace with investment. It was not shown that either the original installation or any extensions were made in advance of the demand for service, while there was some evidence that the public were asking for service in advance of the time at which it was supplied. The result is that the testimony is placed upon a purely theoretical basis and does not disclose either a sufficient history to determine whether any allowance should be made or that the experts considered such actual facts and took them into consideration in stating their conclusions.

The respondent in its brief falls into the same error for it relies largely upon the fact that in numerous cases the appellate courts have allowed a going concern value varying from 9.5 per cent to 13.9 per cent. While that fact is interesting, it lends little support to the claim made here, for the right to any allowance depends upon the facts shown in the particular case.

The evidence is equally unsatisfactory as to the existence of any special value in the organization of employees found here. The company purchases its power from another company and

likewise purchases any trained service that it requires from affiliated companies. The Commission might have concluded under the evidence that all of the service required to operate this company could have been procured in less than thirty days.

While the Commission might have concluded that there was some slight evidence of going concern value, certainly much less than that claimed by respondent, we cannot say that it was sufficient to warrant the conclusion that fair value could not be arrived at without special allowance on this account. The burden of proof was upon the respondent to show confiscation and incidentally that it was entitled to a special allowance for going concern value. This it failed to do. Our conclusion is, therefore, that we cannot say under the proofs as made that a sufficient and fair value could not be fixed for this company without a special allowance for going concern value.

As we have pointed out, while the respective engineers for respondent and complainants were wide apart on the allowances to be made in *dollars* for overhead and intangible costs entering into the reproduction cost new, they were not greatly apart as to the *percentages* on the items which they included as proper to be considered. The discrepancy was largely due to the base on which the percentages were to be calculated.

We have found that a fair percentage for all the overheads and intangibles, including cost of financing, would be 17½ per cent.

While in making such calculations, it is usual to add the percentage to the physical cost new and then deduct the depreciation from the aggregate, it makes no practical difference if we add the percentage to the depreciated reproduction cost, bearing in mind that these overhead and intangible items are subject to the same *ratio* for accrued depreciation.

Hence we have as the reproduction cost, depreciated, the following:

Value of physical property depreciated	$150,000
Add intangibles and overheads, 17½%	26,250
Total reproduction cost, depreciated	$176,250

Using our independent judgment, after considering the character of respondent's plant, the book cost of invested capital as shown on the company's books, the reproduction cost new and the accrued depreciation, and giving effect to the fact that the respondent's plant is a going concern, we find that the fair value of respondent's plant, used and useful for utility purposes, at the date of the final order in this case was $175,000. To this must be added $11,000 allowed for working capital and supplies and material; and we determine that $186,000 was the proper rate base on which a fair and reasonable return should be allowed the respondent.

Annual Depreciation

[29, 30] A careful consideration of the Commission's discussion of this subject has convinced us that the respondent will be deprived of a fair return even if the Commission had applied its reasoning to a correct base. Our present purpose is, therefore, to point out the particular errors which have led to that result.

We agree with the conclusion of the Commission and the expert witnesses that allowances for annual depreciation

tion should be reasonably consistent with allowances for accrued depreciation. We also agree with the assumption of the Commission that where the actual experience of a particular utility is available and the rates of that utility are being examined, such information is of great value.

The company presented its claim for annual depreciation principally through the testimony of the two experts, Dreyfus and Scharff, and the complainants in the testimony of the expert, Davis. Dreyfus fixed the amount at $6,500, Scharff at $5,109, and Davis at $4,202, while the Commission concluded that the company was only entitled to $2,297. The Commission disregarded the conclusions of the experts on both sides and refused to follow the methods adopted by those experts. They adopted a method of their own. The Commission turned to the books of the company and discovered that for the period from January 1, 1920, to May 31, 1937, the company had annually set up as a reserve for depreciation from the earnings of the company sums which aggregated in the end $78,422.38. It then found as a fact that that sum was a reasonable amount of depreciation for that period. It then showed by calculations that this would amount to an annual depreciation of $4,369.34, and that if the 4 per cent sinking-fund method were adopted an annual allowance of $2,297.16 would with interest at 4 per cent produce the total of $78,422.38. It states that the percentage that will produce this sum, when applied to the fixed capital on the books of respondent at the close of each year or period from January 1, 1920, to May 31, 1937, is 3.03 per cent. The Commission conceded as a basis for its calculations and conclusions that the amount claimed by the company was proper.

In short, the Commission accepted $4,369.34 as a reasonable amount for depreciation and then proceeded arbitrarily to reduce that amount to $2,297 by multiplying and dividing, forgetting that it had found the larger sum represented the actual depreciation. The Commission's whole calculation is based on the conclusion that the amount claimed by the company is a fair amount and that the amount so claimed on the books of the company is conclusive against it, but the company claimed $4,369.34 and not $2,297, and no theory for calculating depreciation can change that fact. Consequently, the Commission's finding is left without any support whatever. In addition, it is out of all proportion, not only to the conclusion of the company's experts, but is only about one-half of that shown to be proper by the experts representing the parties who initiated this proceeding. Such a conclusion is arbitrary, unreasonable and without legal warrant.

[31] We are also of the opinion that the Commission in discussing the general subject of depreciation showed that it failed to give due consideration to the element of obsolescence as an item to be considered in arriving at a proper allowance. For further discussion of this subject we refer to what the expert, Scharff, said in his testimony. That obsolescence is an important item was shown by the history of electric street railways and is made evident today by the rapid improvements that have been made in electric equipment resulting in the displacement

of much machinery before it has served its normal life. In determining a proper amount to be allowed for depreciation, consideration must be given to the interests of the investing public as well as to the consumer. No business can be successfully operated for any reasonable length of time without making adequate allowance for depreciation. The claim for depreciation is never fanciful but is just as real as any other element with which we must deal in fixing rates.

[32] Finally, even though the proper basic facts are found for fixing annual depreciation, the sinking-fund method must be applied with discrimination as we pointed out in the Cheltenham & Abington Case, *supra*. We make special reference again to what was there said because it is applicable to the present situation. In our opinion, if the sinking-fund method is adopted the increment by way of return in the form of interest should be calculated on the basis of the highest grade investments such as Federal, state, or municipal securities and it is clear that such investments cannot be secured at this time so as to yield 4 per cent and have the funds available when needed. The Commission in this connection said: "It follows, therefore, that respondent can invest 62 per cent of its depreciation funds in its own property on which it will receive a return of at least 6 per cent, and that only 38 per cent of the fund need be kept in marketable assets available for ready liquidation in order to meet current requirements. On this basis, if the funds necessarily invested in marketable assets earned only 1 per cent, the overall earnings of the fund would be in excess of 4 per cent. Therefore, the Commission in this case finds that an allowance for annual depreciation based upon the annuity required by a 4 per cent sinking fund will adequately provide for return of the investment at the end of its life." (24 PUR(NS) 337, 363). The fallacy in this argument is readily discovered. Interest returns vary in inverse proportion to the sufficiency of the security on which the loan is made. Assume that a 2 per cent return can be secured on a state or Federal bond, while 6 per cent may be secured on some other less sound security. The lender demands the higher rate for the risk which he takes. When the sinking-fund method is employed it assumes that no risk is to be incurred and on such a basis should the accumulations be calculated. If the company sees fit to invest the money in less desirable securities on account of receiving a greater gain, it assumes the risk and is entitled to the additional return. In short, the whole method of calculating depreciation on the sinking-fund basis is predicated on the assumption of absolute safety. In our opinion a much fairer result will be obtained if the Commission gives consideration to different methods of calculating depreciation before reaching a final result for there are advantages and disadvantages, as we have pointed out, in the employment of the sinking-fund method.

[33] The discussions of the experts require some further comment by us. As we understand the position of the expert, Davis, he excluded from the value of the physical property as a basis for calculating depreciation, the overhead items of administrative and engineering expenses incident to con-

struction and allowance for omissions and contingencies. These items are just as much a part of the value of the physical plant as anything else that enters into its construction and such values disappear and are lost as the plant depreciates in value or becomes obsolescent.

Giving due weight to the methods of calculating depreciation adopted by the several engineers and the sinking-fund method used by the Commission, at a fairer rate of return than 4 per cent, we find that $4,500 is a fair and reasonable allowance for annual depreciation.

Operating Expenses, Etc.

We come then to expenses of operation, including managerial fees and the expenses of rate litigation.

The Commission determined the allowable operating expenses of respondent for the 17-month period from January 1, 1936, to May 31, 1937, and was of the opinion that such allowable expenses reflected the reasonable, average, and normal operating expenses of respondent. To the period so used we find no substantial objection.

The operating expenses of respondent, exclusive of taxes and provision for depreciation (and exclusive of rental of its general office at Brookville, in the amount of $1,200 for 1936, and $500 for 1937), were $75,590.16 for the year 1936, and $28,049.16 for the five months ending May 31, 1937. The Commission disallowed a total of $22,760.51 of the operating expenses incurred for the twelve months ending December 31, 1936, and $4,586.41 of the operating expenses incurred for the five months ending May 31, 1937. The Commission allowed $600 for rental of its general office at Brookville as a proper annual charge to operating expenses.

The total allowable operating expenses, as found by the Commission, over the 17-month period were $77,-

	1936	5 Mos. Ended May 31, 1937
Operating expenses as reflected on books of respondent exclusive of taxes and provision for depreciation and rental	$75,590.16	$28,049.16
Adjustments:		
Disallowed Expenses:		
Generation by Gas Power	4,118.57	615.77
Pool Expenses from Pennsylvania Elec. Co.:		
Utility Clearing Corporation	1,503.10	491.42
Utility Employees Securities Co.	309.63	213.38
General Expenses:		
Management Fees	2,392.24	1,112.87
Corporate Records and Secretarial Assistants	371.82	121.77
Utility Accountants and Tax Consultants	631.63	149.78
E. J. Cheney	43.00	9.75
Overaccrual for Corporate and Advisory Expense		437.75
Ford, Bacon and Davis	1,099.63	
Utility Clearing Corporation		149.72
Contributions and Donations	28.56	25.00
Uncollectible Consumers Accounts	22.08	259.20
Public Service Commission Expenses	12,240.25	1,000.00
Total Disallowed Expenses	$22,760.51	$4,586.41
Additional Expenses Allowed:		
Generation by Gas Power	85.90	35.79
Rent of Office at Brookville	600.00	250.00
Total Additional Expenses	$685.90	$285.79
Adjusted operating expenses exclusive of taxes and provision for depreciation	$53,515.55	$23,748.54

Order Nisi of P.U.C. dated July 5, 1938—(189a, 190a).

264.09, or $4,544.94 per month, and on this basis the Commission allowed yearly operating expenses of $54,539.28.

The items of expense disallowed, and for which respondent now claims an allowance, may be classified as follows:

A. Charges made by affiliates (admitted) and others to respondent through the Pennsylvania Electric Company.

B. Direct charges made to respondent by affiliates (admitted or so found by Commission), including management fees.

C. Other direct expenses of respondent.

It appears that all accounting work incident to keeping consumer and miscellaneous operating records was performed by the office force at Brookville, and that the general books of account of respondent were kept by the accounting department of Pennsylvania Electric Company at Johnstown. Included in the operating expenses on the books of respondent, as recorded by the accounting department and management of Pennsylvania Electric Company, were charges from admitted affiliate interests and others included in certain accounts which were pooled on the books of Pennsylvania Electric Company and apportioned in part to respondent. The charges to the pool account of Pennsylvania Electric Company consisted of (1) charges arising from Utility Clearing Corporation; (2) contributions to Utilities Employees Securities Company; and (3) charges from other sources including Pennsylvania Electric Company itself.

[34] Utility Clearing Corporation, Utilities Employees Securities Company, and Utility Management Corporation are admitted affiliates. The Commission found that Utilities Accountants and Tax Consultants (Utility and Financial Accountants, Inc.), Corporate Records and Secretarial Assistants, and E. J. Cheney were affiliates of respondent. Such finding was based largely on the report of J. A. Wilhelm and Harry Osman, which was a report submitted to the Federal Power Commission. This report was received in evidence by the Commission, over the objection of counsel for respondent. It contained facts showing affiliation between respondent and the nonadmitted affiliates, and it was upon the facts contained in this report that the Commission based its findings of affiliation. Both Wilhelm and Osman, the former an employee of the Pennsylvania Public Utility Commission, and the latter an employee of the Federal Power Commission, identified the report and explained its sources, and were availabe to counsel for respondent for cross-examination. The sources were the books of the various companies comprising the Associated Gas and Electric system. We think that the report was properly admissible. As stated in Muskogee Gas & E. Co. v. State, 81 Okla 176, PUR 1920C 806, 813, 186 Pac 730, 733: "The witness is not giving the contents of the books as such. He is merely stating what he has found out and knows from his own knowledge. This the company has opportunity to rebut if it has in its possession the records and books from which the exhibits were compiled." Certainly the books of the Associated Gas and Electric companies were available to respondent in this case.

Neither the Public Service Company Law (Act of July 26, 1913, P.L. 1374, 66 PS § 1 et seq.) nor the Public Utility Law (Act of May 28, 1937, P.L. 1053, 66 PS § 1101 et seq.) contains any provisions relating to the kind of evidence which may be received and acted upon by the Commission, and we do not think that the legislature contemplated that the strict rules of evidence should be rigidly applied to Commission hearings. Schuylkill R. Co. v. Public Service Commission (1920) 268 Pa 430, 432, PUR 1921C 114, 112 Atl 5. We do not conceive that respondent was deprived of any right by the admission of the report, or that such admission violated any applicable rule of law.[5] Respondent had ample opportunity to establish that the facts set forth in the report were incorrect and not taken from the proper books and records.

[35] We conclude that the Commission's finding with respect to affiliation between respondent and Utility Accountants and Tax Consultants (Utility and Financial Accountants, Inc.), Corporate Records and Secretarial Assistants, and E. J. Cheney, was supported by the evidence.[6]

Consequently, the burden was on respondent to show that such expenses paid to these affiliates were for services which were reasonable and proper, and that such amounts so paid were not in excess of the reasonable cost of furnishing such services. See § 701 (a) and (c) of Act of May 28, 1937, P.L. 1053, 66 PS § 1271 (a, c).

By its orders dated June 8, June 15, and July 1, 1937, the Commission required respondent to submit certain information which it deemed pertinent to a consideration of such items of operating expenses. The information which was sought by the Commission was as follows: (a) copies of bills, (b) cost to billing company for alleged services and necessity therefor, (c) amounts charged to each account on books of respondent, together with complete underlying details, (d) proof that any specific service was rendered, and (e) analysis of pool accounts of Pennsylvania Electric Company and amounts allocated therefrom to respondent together with the same information required under (a) to (d), inclusive.

[36] The Commission disallowed any payments made to these affiliated interests on the ground that there was no evidence in the record as to the val-

[5] See Act of May 28, 1937, P.L. 1053, Art. XI, § 1107, 66 PS § 1437.

[6] "This conclusion is based upon the following facts: That respondent is directly controlled by Central U. S. Utilities Corporation which corporation is indirectly controlled by Associated Gas & Electric Properties, a Massachusetts trust, which is owned jointly by H. C. Hopson and J. I. Mange; that the interests, which control respondent, either directly or indirectly, also control Utility Accountants and Tax Consultants, Utility and Financial Advertising Agency, Daniel Starch and Staff, and E. J. Cheney; that such interests either singly or in conjunction with one or more other persons or corporations, are exercising full and unhindered influence and control over the policies, acts, and actions of respondent; that such interests stand in such relationship to respondent that there is an absence of free and equal bargaining power between respondent and the persons and corporations herein held to be affiliates; that affiliation exists because of interlocking directors, officers and employees and by their acts and actions; that these persons and corporations are under the dominant control and management of the same persons and corporations who control respondent; and that the Associated Gas & Electric Company itself deems all such corporations and persons as affiliates because of the execution and operation of the life insurance contracts heretofore reviewed." (Order Nisi of P.U.C. dated July 5, 1938, pp. 132a, 133a, 24 PUR(NS) 337, 371.)

ue, necessity, or benefit of the services rendered by these affiliated companies to respondent; but the Commission in its brief recognizes that respondent did receive some necessary services from its affiliates and that the affiliates may be able to supply those services at a cost to respondent lower than if the services were secured elsewhere. In the Commission's brief it is also stated: "If appellant will properly support the charges, the Commission will allow them."

Charges arising out of intercompany relationships between affiliated companies should be scrutinized with care (Johnsonburg v. Public Service Commission [1930] 98 Pa Super Ct 284, 291; Chambersburg Gas Co. v. Public Service Commission [1935] 116 Pa Super Ct 196, 226, 7 PUR(NS) 359, 176 Atl 794); and if there is an absence of data and information from which the reasonableness and propriety of the services rendered and the reasonable cost of rendering such services by the servicing companies can be ascertained by the Commission, allowance is properly refused. New York State Electric & Gas Corp. v. Public Service Commission (1935) 245 App Div 131, 9 PUR(NS) 163, 281 NY Supp 384; Id. (1937) 274 NY 591, 10 NE(2d) 567; Id. (1937) 275 NY 534, 11 NE(2d) 736; Smith v. Illinois Bell Teleph. Co. (1930) 282 US 133, 75 L ed 255, PUR1931A 1, 51 S Ct 65.

The Commission's appraisal of the evidence led it to conclude that many of the charges by the affiliated companies were for the direct or indirect benefit of holding and intermediate holding companies in the Associated Gas and Electric system. With this we concur. Moreover, the record in this case is an illustration of the fact that effective and satisfactory state regulation of utilities is made increasingly difficult by the progressive integration of utility services under holding company domination.

The desire of public utility management, evidenced by various methods, to secure the highest possible return to the ultimate owners is incompatible with the semipublic nature of the utility business, which the management directs. It therefore follows that the Commission should scrutinize carefully charges by affiliates, as inflated charges to the operating company may be a means to improperly increase the allowable revenue and raise the cost to consumers of utility service, as well as an unwarranted source of profit to the ultimate holding company.

A. The Commission disallowed charges made by Utility Clearing Corporation and Utilities Employees Securities Company (admitted affiliates) to respondent through the Pennsylvania Electric Company. The Utility Clearing Corporation, the Commission found, acted in the capacity of a clearing house for the acceptance, payment, and apportionment of bills rendered to holding and intermediate holding companies in the Associated system by affiliated companies and others, and that bills thus rendered were charged to pool accounts on the books of the clearing corporation, and upon apportionment the pool accounts were credited and concurrent charges made to the Utility Management Corporation and various operating companies in the Associated system, including Pennsylvania Electric Company and respondent. During the year 1936

the amount thus apportioned or charged to the Pennsylvania Electric Company was $300,169.37, and for the five months ending May 31, 1937, $60,671.92. The Pennsylvania Electric Company allocated these total pool expenses to itself and other Associated system companies operating in the western part of Pennsylvania, and commonly called the "Western Pennsylvania group," based upon the relationship of the gross operating revenue of each company in the group to the total gross operating revenue of the companies in that group. The total expense thus found and applied to the total pool expense in arriving at the amount to be allocated to appellant was 0.50 per cent in 1936, and 0.81 per cent for the five months ending May 31, 1937. The cost of the services to the Utility Clearing Corporation does not appear, nor was the need for the service by respondent adequately established. Respondent failed to sustain the burden of proof, and the Commission committed no error, nor did it act improperly, in excluding such payment as an operating expense. It is evident from the bills of the Utility Clearing Corporation that much of the service performed by this company was for the benefit of holding and intermediate holding companies in the Associated Gas and Electric system, although some service which was necessary and beneficial may have been rendered to respondent and other operating companies.

The Commission (24 PUR(NS) at p. 377) likewise properly disallowed respondent's apportioned contributions to Utilities Employees Securities Company, an admitted affiliate. The record does not show that these payments were for benefits received by respondent. The record shows that out of a total of $71,066.83 "charged to Injuries and Damages on the books of Pennsylvania Electric Company, $61,926.85 represented contributions made by Pennsylvania Electric Company to Utilities Employees Securities Company during the year 1936; and also that contributions were made to the same company in the amount of $26,346.43 during the 5-month period ending May 31, 1937, and charged to Account '800. Employees Welfare Expense.'" These sums were also prorated in part to respondent. The Commission found that the contributions were used to increase the stock equity of Associated Gas and Electric Company in Utilities Employees Securities Company, and that the contributions accrued entirely to the benefit of the former. After excluding charges from Utility Clearing Corporation and contributions to Utilities Employees Securities Company, the Commission allowed the balance prorated to respondent from the pool accounts of Pennsylvania Electric Company, which was $891.25 for the year 1936, and $621.75 for the 5-month period ending May 31, 1937, representing, as the Commission found, a fair and reasonable allowance for the services rendered and expenses incurred by Pennsylvania Electric Company on respondent's behalf.

B. The Commission disallowed charges made by Corporate Records and Secretarial Assistants, Utility Accountants and Tax Consultants, and E. J. Cheney, which were found by the Commission to be affiliates of respondent. The Commission (24 PUR (NS) at p. 385) disallowed these items

as proper operating expenses because respondent "failed, refused or neglected to furnish data showing (a) the cost to the original billing company of furnishing the service, (b) proof that specific service was rendered and the necessity therefor, and (c) contractual relationship and working arrangements with respondent." The Commission was justified in disallowing these items on the evidence in the record.

The Commission disallowed a charge of $149.72 made directly to respondent by Utility Clearing Corporation, an admitted affiliate. The evidence does not support the allowance of this charge as an operating expense; the charge does not appear to have been for the benefit of respondent.

Under the terms of a contract, Solar paid Utility Management Corporation 2½ per cent per year of its gross earnings for acting as its operating manager; the amount which respondent paid for 1936 was $2,392.24, and for the five months ending May 31, 1937, $1,112.87. The Commission disallowed these payments as proper operating expenses. The Commission stated that respondent did not obey the order of the Commission, dated June 15, 1937, in which order the Commission directed it to submit "data with respect to billings by the Utility Management Corporation, for the year 1936 and five months' period ending May 31, 1937, setting forth (a) cost to respondent as evidenced by billings for management fees, (b) cost to the Utility Management Corporation for furnishing management service to respondent together with full and complete underlying details, (c) the accounts charged on the books of respondent as the result of billings by the Utility Management Corporation, and (d) necessity for such service and proof of specific service having been rendered," (24 PUR(NS) at p. 381), and disallowed the management fees in their entirety as operating expenses of respondent, for the following reasons: "(a) That respondent did not submit data to show the cost to the operating manager for specific management services allegedly furnished or the necessity therefor as provided in the Commission's order of June 15, 1937; (b) that respondent placed no data in the record to indicate what the cost to respondent for management service would have been if such service had been secured from a nonaffiliated interest; (c) that the record indicates that the operating personnel at Brookville is adequate to meet the management problems of a company of this size; (d) that respondent has failed to sustain the burden of proof to show that management services were actually rendered or that any such services were reasonably necessary to the efficient operation of the property of respondent; and (e) that respondent has failed to show that the management contract is in the public interest or even that it is in the interest of respondent itself and that on the contrary, the record strongly indicates the contract to be detrimental to respondent and against public interest." (24 PUR(NS) at p. 384.)

"Management fees charged against a public service company by the holding corporation in control by virtue of its stock ownership, [are] in a somewhat different position from ordinary

operating expenses. The relation between the companies warrants the Commission in giving close scrutiny to and requiring adequate proof of the benefit or advantage accruing to the public service company, and in turn to the public, by the management contract, which the Commission found wholly lacking in this case." Scranton-Spring Brook Water Service Co. v. Public Service Commission (1935) 119 Pa Super Ct 117, 142, 14 PUR (NS) 73, 89, 181 Atl 77, 87.

We find no compelling reason to object to the ruling of the Commission, except as to (c), which, although the conclusion may be correct, lacks evidential support in the record; however, it does not affect the main contention.

C. The Commission's disallowance of contributions by respondent in the amount of $28.56, and $25 for the year 1936 and the first five months of 1937, respectively, must be sustained; the amounts involved are trivial. They are expenditures which are entirely optional and not compulsory, and it does not appear that any adverse effect on respondent's revenue would ensue if such contributions and donations were not made. Denver Union Stock Yard Co. v. United States (1938) 304 US 470, 482, 483, 82 L ed 1469, 24 PUR (NS) 155, 58 S Ct 990.

Respondent included in operating expenses for 1936 and the five months ending May 31, 1937, the sums of $600 and $50., respectively, for uncollectible consumers' accounts. The Commission disallowed $259.20 for the five months of 1937 as being an excess amount to place in a reserve for such purpose, and found that the proper provision for uncollectible consumers' accounts should be $577.92 for the year 1936, and $240.80 for the five months ending May 31, 1937. The Commission's finding was based upon the actual experience of respondent during a 65-month period. On the basis of the respondent's experience, we are of the opinion that the Commission's allowance for uncollectible consumers' accounts is proper and adequate. Chambersburg Gas Co. v. Public Service Commission, *supra*, 116 Pa Super Ct at p. 225.

Respondent made provision for certain advisory and corporate expenses by creating an account entitled "Reserve for Advisory and Corporate Expenses," with concurrent charges to "Other General Expenses" for the five months ending May 31, 1937. This item of $437.75 represents the difference between the amount thus accrued for the 5-month period and the amount actually expended during that period. The Commission disallowed this item in determining the normal operating expenses of respondent for the reason that there were no data of record to show that there was any legitimate anticipated expenses for which such an accrual should be provided. We find no error in the Commission's action in this respect, as the overaccrual is not supported by respondent's experience or by any other facts in the record.

As an operating expense respondent included in "Generation by Gas Power" for the year 1936 and the five months ending May 31, 1937, the amounts of $4,118.57 and $615.77, respectively. The Commission found that respondent's gas engine generating plant was not used and useful in

the public service, and excluded the gas engine, generators, and auxiliary equipment of said plant as being property not used or useful in the public service, in its determination of a rate base. We have previously stated that it is our conclusion that such equipment should be included at 50 per cent of its depreciated reproduction cost, as estimated by Messrs. Dreyfus and Scharff. Consequently, there should be an allowance for the related items of expense of operation of the plant, which were disallowed by the Commission. See Commission's brief, p. 93. The allowable expenses for the gas engine generation plant would be $4,118.57 for the 12-month period ending December 31, 1936, and $615.77 for the 5-month period ending May 31, 1937. In view of our conclusions, the Commission's allowance for the quantity of power generated by the gas engine generating plant for the year 1936 and the five months ending May 31, 1937, should be excluded.

[37] The payment to Ford, Bacon and Davis in the amount of $1,099.63 was disallowed by the Commission as an operating expense because it represents rate case expense. This is an item that should be amortized over a reasonable period with the other rate case expenses, which we think were improperly disallowed by the Commission.

The Commission disallowed, under operating expenses, any amounts which were paid by appellant as charges for this rate case litigation, for the reasons that (1) respondent's action in this case has been arbitrary and unwarranted, and (2) that the rates charged by respondent have been excessive. The total charges and accruals for rate case expenses for 1936 and the five months ending May 31, 1937, were $12,240.25 and $1,000, respectively. The Commission determined that $2,589.52 in 1936 and $1,000 for the five months ending May 31, 1937, represented expenses incurred in connection with investigations undertaken by the Public Service Commission and the Federal Power Commission with regard to contractual relationships and working arrangements between Pennsylvania operating companies in the Associated Gas and Electric system (including respondent) and their admitted and nonadmitted affiliates, and that the balance of the charges in the year 1936 amounting to $9,650.73 was incurred in connection with the rate proceeding under review. All of the expenditures were disallowed.

[38] In addition to the proceedings referred to in the opening of this opinion, on January 6, 1936, at the instance of the Pennsylvania Public Service Commission, the Federal Power Commission, by its order in the matter of Metropolitan Edison Company et al., at Docket IT 5015, included respondent as one of the organizations whose affairs the Commission intended to investigate. The charges appearing on respondent's books for the expenses incurred in connection with this matter, which was instigated by the Public Service Commission of the commonwealth of Pennsylvania, and which respondent was obliged to defend, are among the charges disallowed as operating expenses by the Commission. The relationship of these expenditures to the rate case litigation was such that, if the latter expenses should be allowed, the former should

be included therein. "Moreover, there is nothing in the record justifying an inference that the figures were erroneous or the payments improvident." West Ohio Gas Co. v. Ohio Pub. Utilities Commission (1935) 294 US 63, 73, 79 L ed 761, 6 PUR(NS) 449, 455, 55 S Ct 316, 321.

The litigation to which respondent has been subjected did not result from any action taken by it whereby it sought through a new tariff to raise its rates, which were then found to be excessive and unreasonable; but rather the expenses have resulted from charges incurred in self-defense. The inception of the rate case may have resulted from the proposed merger of respondent and Pennsylvania Electric Company (see Brookville v. Public Service Commission, 102 Pa Super Ct 503, PUR1931E 157, 157 Atl 513, affirmed [1932] 307 Pa 194, PUR 1933A 80, 160 Atl 856), but the record before us clearly discloses the immediate presence, or the attachment soon thereafter, of objectives other than the establishment of just and reasonable rates. Certainly there is no justification for a rate case to be used for the purpose of "laying the ground work for [municipal] ownership," or "for the appointment of a receiver for [respondent]," or for laying "the foundation for the dissolution of the charter of [respondent]." Respondent's expenses did not arise out of an attempt to establish an excessive and unreasonable rate schedule, but were incurred in defense of a rate schedule under which it had legally been operating. In such circumstances there appears to be no sound reason why respondent should be subjected to the payment of reasonable litigation expenses, incurred in defense of rates which it was properly charging under Commission supervision. The fact that an eventual reduction of its rates was ordered, would not militate against this conclusion. Since 1913, respondent "has been subject to supervision by a Commission empowered to prohibit unreasonable rates and the presumption is that any profits from its business were lawfully acquired." Newton v. Consolidated Gas Co. 258 US 165, 175, 66 L ed 538, PUR1922B 752, 757, 42 S Ct 264, 267. In Driscoll v. Edison Light & P. Co. (1939) 307 US 104, 83 L ed 1134, 28 PUR(NS) 65, 75, 59 S Ct 715, Mr. Justice Reed, speaking for the Supreme Court said: "As the Commission concluded that the prior rates of the company were obviously excessive, it allowed nothing for expense in defending them. Consequently there is no discussion of the reasonableness of the amount of the company's charge and we accept them as reasonable. Even where the rates in effect are excessive, *on a proceeding by a Commission to determine reasonableness,* we are of the view that the utility should be allowed its fair and proper expenses for presenting its side to the Commission." (Italics supplied.)

In Scranton-Spring Brook Water Service Co. v. Public Service Commission, *supra,* respondent-appellant took the initiatory action by filing a tariff schedule raising its rates to an extent found by the Commission to be excessive and unreasonable, and we held that there had been no reason why the litigation expense caused by its own unjust and unreasonable action should be saddled upon the public. That is not the situation before us in the in-

stant case, where the litigation expenses incident to respondent's defense are the result of proceedings instituted by or through the Commission to determine reasonableness. We are of the opinion that there should be an allowance for rate case expenses in the amount of $12,240.25 for 1936 and $1,000 for the first five months of 1937, and that the same should be amortized over a period of six years, and that the sum of $1,099.60 paid to Ford, Bacon and Davis during 1936, in connection with investigation and checks of valuations, be similarly amortized as a rate case expense; the total to be amortized would be $14,339.88, which, with interest at 6 per cent, would require an annual allowance for six years of $2,916.20.

[39] Respondent pays $1,200 per year, or $100 per month, for its general office at Brookville, and the same is used for collection and other general office purposes, while electrical appliances are also there on display. The Commission disallowed in gross income deductions $600 of the rental item for 1936 and $250 for the five months ending May 31, 1937. The Commission points out that respondent did not include this rental in operating expenses, but in gross income deductions. The reason given by the Commission for the allowance of only $600 of this rental as a proper annual charge to operating expenses was that only approximately 50 per cent of the available floor space in the building in question is used for general office purposes, and that therefore only 50 per cent of this annual rental should be permitted as a reduction from gross income of respondent. This was an actually incurred expense and reflected by the books of respondent. A rental item of the amount here involved is not unreasonable, and we think that the Commission has arbitrarily concluded otherwise. As we view the record, the evidence does not support the Commission's finding, and we think that the Commission's apportionment of the rental to the amount of floor space which it considered actually utilized for collection and other general office purposes is purely arbitrary. Full allowance for the rental paid by respondent under the circumstances should be made. If there has been a violation of the law, as the Commission's brief indicates, of § 912 of the Public Utility Law, 66 PS § 1352, that is a matter which is not here involved.

The duty upon the Commission was to determine what the fair and reasonable expenses of operating respondent company would be (Chambersburg Gas Co. v. Public Service Commission (1935) 116 Pa Super Ct 196, 227, 7 PUR(NS) 359, 176 Atl 794), and in so determining modern business realities should not be ignored. The functioning of the modern corporation—especially the public utility—is complex, and recent state and Federal legislation has added to that complexity. It is unnecessary to detail the accounting and reporting requirements with which every such corporation is confronted. It would be ignoring the obvious to conclude that this work can be done without a proper staff and without payment for the services required. The Commission is manifestly cognizant of the situation as we have previously noted. Although we have sustained, for reasons given, most of the disallowances of operating expenses for the 17-month period, never-

theless we are not unmindful that adequate provision must be made for respondent's corporate functioning and for its compliance with state and Federal demands for various types of information. The Commission has stated that, assuming a portion of the expenses which have been disallowed are properly allowable operating expenses, it is not possible from the record to determine the amount thereof because respondent has failed, neglected, and refused to comply with the orders of the Commission to make necessary data available. We take it that if, in the future, such data is furnished the Commission, it will increase the annual operating expenses by adding such amount as it finds properly allowable for managerial, engineering, legal, and secretarial services performed for the respondent as a *separate corporate unit;* for it must not be overlooked that this court, in the case of Brookville v. Public Service Commission, 102 Pa Super Ct 503, PUR1931E 157, 157 Atl 513, affirmed in (1932) 307 Pa 194, PUR1933A 80, 160 Atl 856, reversed the order of the Commission approving the sale of all the property and franchises of Solar to Pennsylvania Electric, and remitted the record with directions that the rate case pending to Complaint Docket No. 8126—the present case, as consolidated with Complaint Docket No. 11404—should be disposed of and the fair value of Solar's property be determined before the Commission passed upon the application for approval of the sale.

One of the main reasons for our ruling was that we felt that the fair value of Solar's property should be determined and the operating expenses and other items which enter into the fixing of fair and reasonable rates should be ascertained before a sale and merger should be effected, as "it would be very much more difficult and expensive to ascertain these salient facts from the books of a company which has absorbed about 150 smaller systems." *Supra,* 102 Pa Super Ct at p. 509, PUR1931E at p. 159.

Our ruling was, in large measure, ignored, for the respondent has, to all practical intents and purposes, been operated by Pennsylvania Electric, and forms a link in the complicated Associated Gas and Electric system. Respondent has been assessed for managerial, consultant, and other like charges and expenses that bore no reasonable relation to its own needs and requirements. We are not able, any more than the Commission, to find from the evidence in the record what is the fair and reasonable amount properly chargeable to the respondent on these accounts. Until the management in actual charge of the respondent is willing to furnish the Commission the full and complete data justifying the contracts entered into with its affiliates in the Associated system and the basis justifying the assessments made against it in this respect, it has only itself to blame if it must bear the consequences flowing from its nullification of our order and its inability or refusal to segregate the items of expense properly chargeable to respondent.

The changes which we have made in the Commission's determination of allowable operating expenses are reflect-

ed in the following statement [cf. footnote 4]:

	1936	5 Mos. Ended May 31, 1937
Operating expenses as reflected on books of respondent exclusive of taxes and provision for depreciation	$75,590.16	$28,049.16
Adjustments:		
Disallowed Expenses:		
Pool Expenses from Pennsylvania Electric Co.:		
Utility Clearing Corporation	1,503.10	491.42
Utility Employees Securities Co.	309.63	213.38
General Expenses:		
Management Fees	2,392.24	1,112.87
Corporate Records and Secretarial Assistants	371.82	121.77
Utility Accountants and Tax Consultants	631.63	149.78
E. J. Cheney	43.00	9.75
Overaccrual for Corporate and Advisory Expense		437.75
Utility Clearing Corporation		149.72
Contributions and donations	28.56	25.00
Uncollectible Consumers' Accounts	22.08	259.20
Total Disallowed Expenses	$5,302.06	$2,970.64
	$70,288.10	$25,078.52
Additional Expenses Allowed:		
Rent of office at Brookville	1,200.00	500.00
Adjusted operating expenses exclusive of taxes and provision for depreciation and rate case expense	71,488.10	25,578.52
Less rate case expense	13,339.88	1,000.00
	$58,148.22	$24,578.52

Using the method of calculation adopetd by the Commission, we find a total of $82,726.74 allowable operating expenses for the 17-month period, which is at the rate of $4,866.28 for one month, and $58,395.36 for twelve months or one year.

Rate of Return

[40] We come then to the rate of return. The respondent complains that the 6 per cent rate of return allowed by the Commission is inadequate and contrary to the evidence adduced relating thereto; that it was the result of a practice adopted by the Commission, and followed herein, of prescribing a rate applicable to all utilities without reference to the circumstances involved in the particular case. We think this criticism is not supported by the record.

The respondent called two witnesses who testified respecting the rate of return. Mr. Knudsen expressed the opinion that 8 per cent would be a fair rate for respondent and Mr. Phelps stated that in his judgment the minimum rate of return should be 7 per cent. These witnesses had a very limited knowledge of the actual operations of this utility, the locality it serves, and other individual factors proper for consideration in determining a fair rate of return. Their testimony, at most, reflected only their views and was not binding on the Commission. There was ample evidence of the amount of the investment, size and nature of the utility, risks, maintenance charges, and all other elements attending this company's origin, development, and operation, to give the Commission sufficient information on which to base a proper rate of return.

We concede that no definite, fixed rule can be laid down which is arbitrarily applicable to all utilities. The risks incurred by some utilities are much greater than others. The rate of return should therefore vary according to the circumstances of each case and be determined from the evidence adduced, like any other fact. Pennsylvania Power & Light Co. v.

Public Service Commission (1937) 128 Pa Super Ct 195, 213, 19 PUR (NS) 433, 193 Atl 427. "What may be a fair return for one may be inadequate for another, depending upon circumstances, locality, and risk." United R. & Electric Co. v. West, 280 US 234, 251, 252, 74 L ed 390, PUR 1930A 225, 228, 50 S Ct 123, 125; Scranton-Spring Brook Water Service Co. v. Public Service Commission (1935) 119 Pa Super Ct 117, 145, 14 PUR(NS) 73, 181 Atl 77.

[41] The courts have held that the return should be reasonably sufficient to assure confidence in the financial soundness of the utility, and should be adequate, under efficient and economical management, to pay all expenses of operation, provide for depreciation, payment of interest and reasonable dividends, and for a reasonable amount to be applied to a surplus account, thus insuring the maintenance of credit and enable it to raise money necessary for proper discharge of its public duties. Bluefield Water Works & Improv. Co. v. West Virginia Pub. Service Commission, 262 US 679, 692, 67 L ed 1176, PUR1923D 11, 43 S Ct 675; United R. & Electric Co. v. West, *supra*.

[42] The rate allowed, while not generous, is not out of line with the rates approved by the appellate courts and cannot be said in this case to be confiscatory. In Willcox v. Consolidated Gas Co. (1909) 212 US 19, 48, 50, 53 L ed 382, 29 S Ct 192, 48 LRA (NS) 1134, 15 Ann Cas 1034; 6 per cent was held by the United States Supreme Court to be sufficient return for a company supplying gas to New York. The rate of return of 6 per cent, in the case of Driscoll v. Edison Light & P. Co. (1939) 307 US 104, 83 L ed 1134, 28 PUR(NS) 65, 59 S Ct 715, was held not to be confiscatory. See, also, Scranton-Spring Brook Water Service Co. v. Public Service Commission, *supra;* Pennsylvania Power & Light Co. v. Public Service Commission, *supra*.

It will be noted, however, that the order of the Commission is based on conditions existing at the date of its entry. It cannot be applied as a determination of a fair and reasonable return in the past. The fact that the complainants in their prayer for relief asked for a reduction of respondent's rates so as to return not more than 7 per cent upon the fair and reasonable value of its property, shows the change which has occurred in the matter of fair return since the institution of these proceedings and which is reflected in the Commission's order, and affords ample justification for its refusal, in the present proceeding to make any order of refund or reparation, as contended for by complainants, as appellants in No. 183, even if it had authority to do so in a proceeding begun in 1929.

One other matter is to be considered. Six per cent is, in our opinion, a fair and reasonable return for an established electric light and power company, in present usual and ordinary circumstances, with its existence assured and operating under favorable conditions. If it is harassed by continual agitation and litigation affecting its corporate existence, its corporate structure and credit may be affected, and as a consequence it may be entitled to a return of 7, or even 8, per cent per annum.

Schedule of Rates

[43] The respondent asserts that the Commission was not warranted in ordering it to file a single schedule of block meter rates applicable to all classes of customers, except street lighting, as it invades the managerial authority vested in it and is contrary to the practice of light and power companies in fixing schedules of rates to be charged customers, based on long years of experience. It contends that such a schedule will tend to discourage the use of electrical appliances requiring a greater consumption of electric energy, is detrimental to the development and expansion of its business, and that it has the right to put into effect separate schedules of rates applicable to domestic, commercial, and industrial uses, respectively. "A public service company, as any other company, has the right to manage its own affairs to the fullest extent consistent with the public interest and in so far as they do not act contrary to law." Hostetter v. Public Service Commission (1933) 110 Pa Super Ct 212, 220, 168 Atl 493, 496. See, also, Coplay Cement Mfg. Co. v. Public Service Commission, 271 Pa 58, 62, PUR1921E 597, 114 Atl 649, 16 ALR 1214.

That separate schedules of rates applicable to domestic, commercial, and industrial purposes respectively are not in violation of law, is clearly indicated by § 307 of the Public Utility Law of May 28, 1937, P.L. 1053, 66 PS § 1147, which provides that a utility "may establish a sliding scale of rates or such other method for the automatic adjustment of the rates of the public utility and shall provide a just and reasonable return on the fair value of the property used and useful in the public service, to be determined upon such equitable or reasonable basis as shall provide such fair return."

A summary, submitted at the argument, of the gross operating revenues of the company since the single schedule under the temporary order of October 5, 1937 (20 PUR(NS) 398) went into effect, shows that the consumption for domestic purposes has been increasing, but for commercial and industrial purposes it has been decreasing. The increase was due partly to increase in customers and also in the amount of the average consumption. It would seem that while the Commission has authority to control the rates so that they are not unreasonable, a utility furnishing electricity should have the right, in the absence of any proof of unfairness, to establish different schedules of rates for electric service for domestic, commercial, and industrial uses.

There is nothing in our ruling in the Pennsylvania Power & Light Company Case, *supra* (128 Pa Super Ct 195, 19 PUR(NS) 433, 193 Atl 427), which justifies the Commission in limiting respondent to a single schedule of block meter rates, rather than three separate schedules of block meter rates, one for domestic consumers, one for commercial consumers, and one for industrial consumers, in addition to the schedule for street lighting. We are in accord with the Commission's endeavors to secure a simplification of schedules. To the foregoing extent this assignment is sustained.

Recapitulation

Based upon the foregoing, we find and determine that the total annual revenues to which respondent is en-

titled is $83,514, summarized as follows:

Return—6% on $186,000	$11,160
Operating expenses, exclusive of provision for annual depreciation and taxes	58,395
Annual depreciation	4,500
Taxes	6,543
Rate case expenses, amortized (for 6 years)	2,916
	$83,514

This is based on the assumption that the allowance for taxes by the Commission is correct. If the amount actually paid is more or less than $6,543, the total will be correspondingly affected. So will operating expenses, if respondent furnishes the Commission full and satisfactory data as to the managerial, engineering, legal, and secretarial expenses properly chargeable to respondent.

This amount, $83,514, is $15,066 less than the respondent's operating annual revenue of $98,580, during the 17-month period above mentioned. It is $3,766 less than the net revenue permitted by the order of October 5, 1937, *supra,* but $10,979 more than the net revenue allowed by the final order appealed from.

Appeal No. 179—To the extent herein indicated the order of the Commission is reversed, and it is *ordered* that within thirty days of the return of this record, the respondent, Solar Electric Company, shall file, post, and publish new tariffs, effective upon ten days' notice to the public, embodying rates for electric service designed to yield annual revenues not to exceed the sum of $83,514. Each party to pay the costs of printing its or his own brief; the cost of printing the record in No. 179, used in both appeals, to be divided equally between the respondent and the intervening appellees, each paying one-half.

Appeal No. 183

The discussion in No. 179, in effect, disposes of the questions raised in this appeal. No good purpose would be served by prolonging it further.

Appeal dismissed at the costs of appellants.

OKLAHOMA CORPORATION COMMISSION

Re Power Factor Correction for Fluorescent Tube Lighting

[Cause No. 17591, Order No. 13336.]

Service, § 327 — Electric — Power factor corrective — Gaseous tube lamps.

1. An electric consumer using neon, mercury vapor, and other gaseous tube lamps having low power factor may reasonably be required to install, at his expense, corrective equipment which will correct the power factor to not less than 90 per cent, p. 319.

Rates, § 328 — Electric — Low power factor — Extra charge — Gaseous tube lamps.

2. An electric consumer using neon, mercury vapor, and other gaseous tube

lamps having low power factor and failing to provide and use corrective equipment may reasonably be required to bear the burden of the extra cost to the utility of serving such uncorrected equipment by paying an additional charge, p. 319.

[November 9, 1939.]

PROCEEDING *to determine reasonableness of rule relating to corrective equipment and extra charge where customers use gaseous tube lamps; rule promulgated.*

By the COMMISSION:

[1, 2] This is a proceeding to determine whether electric utilities operating in this state should be authorized and permitted to enforce the following rule:

"In the case of neon lamps, mercury vapor lamps, and other gaseous tube lamps or lighting devices having low power factor, the company will require the customer to provide at his own expense power factor corrective equipment which will maintain the power factor of each such device at not less than 90 per cent. In the event the customer fails to provide such corrective equipment, the company will assess an annual charge, payable monthly, in such an amount as will compensate for the difference between serving fully corrected equipment and uncorrected equipment of like size and character; such charge to be applied against all uncorrected installations made after the 19th day of November, 1939, and to all existing installations when the same are reconstructed, materially altered, or moved to a new location."

On the 22nd day of July, 1939, the Oklahoma Gas and Electric Company, the Public Service Company of Oklahoma, and Southwestern Light and Power Company, filed joint application seeking the promulgation of a general order authorizing and permitting all electric utilities in the state of Oklahoma to establish and enforce the above rule of service. The cause was docketed under the above caption and number and was set to be heard by the Commission on the 5th day of September, 1939. Notice of general hearing, together with the proposed order, was published as by law required, and additional notice, by mailing, was given to many persons and firms engaged in the business of selling or installing gaseous tube lighting devices.

The cause came regularly on for hearing on the 5th day of September, 1939, Chairman Reford Bond, Commissioner A. S. J. Shaw, and Commissioner Ray O. Weems sitting. The following appearances were entered: For the Oklahoma Gas and Electric Company, L. J. Sartain; for the Public Service Company of Oklahoma and Southwestern Light and Power Company, V. E. McInnis and Lee Thompson; for the Commission, L. V. Reid and Ed White. No person appeared to protest the granting of the order.

The Commission, having fully considered all the evidence adduced at the hearing, and being fully advised in the premises, is of the opinion and finds:

That neon, mercury vapor, and oth-

er gaseous tube lamps, or lighting devices, have come into rather general use within the past few years, and this type of lighting will undoubtedly become a more and more important factor in the lighting field because of the wide variety of uses. While this type of lighting is recognized as being highly efficient in respect to lighting qualities and economical operation, it has one undesirable characteristic, both from the standpoint of consumer and the electric company, namely, low power factor.

In serving equipment of low power factor, the utility must furnish more current than will register on the kilowatt-hour meter; this excess "wattless" current, however, is no benefit to the consumer, but on the contrary, is excess current in the consumer's circuit and the utility's system, and in many cases would cause overloading and overheating of the said lines. This low power factor, if uncorrected, has a decided unfavorable effect upon the size of wires and other equipment required in the consumer's circuit, as well as the utility's system. The attendant dangers and undesirable characteristics of low power factor can best be, and should be, cured by the consumer installing capacitors where the lighting equipment itself is installed. Such corrective equipment would not increase the amount of energy consumed, but takes the excess current out of the line, thus raising the power factor to approximately unity.

The Commission further finds that the cost of serving uncorrected equipment is greater than the cost of serving corrected equipment.

The Commission is of the opinion and finds that it is just, fair, and reasonable to require a consumer of such lighting equipment having low power factor, to install, at his expense, corrective equipment which will correct the power factor to not less than 90 per cent; and that in the event the consumer fails to provide and use such corrective equipment, it is just, fair, and reasonable to place the burden of the extra cost to the utility of serving such uncorrected equipment upon such consumer enjoying the service.

Order

It is, therefore, the order of the Commission, premises considered, that all electric utility companies operating within the state of Oklahoma be, and they are hereby authorized and permitted to enforce the following rule: "In the case of neon lamps, mercury vapor lamps, and other gaseous tube lamps or lighting devices having low power factor, the company will require the customer to provide at his own expense power factor corrective equipment which will maintain the power factor of each such device at not less than 90 per cent. In the event the customer fails to provide such corrective equipment, the company will assess an annual charge, payable monthly, in such an amount as will compensate for the difference between serving fully corrected equipment and uncorrected equipment of like size and character; such charge to be applied against all uncorrected installations made after the 19th day of November, 1939, and to all existing installations when the same are reconstructed, materially altered, or moved to a new location."

HAIL DITTO D-44!

PUBLIC UTILITY COMPANIES LIKE THIS MODERN HI-SPEED *LIQUID TYPE* DUPLICATOR

Public Utility companies everywhere are finding this new, electrically-operated, liquid type duplicator a boon to their operating efficiency. It gets out copies of their financial and operating reports, rate schedules, specifications, engineering drawings, service orders, factory orders, forms and other jobs with amazing speed, convenience and economy. Whole operations are speeded up and made more efficient.

This machine uses no stencil, no type, no ink. It reproduces 300 and more copies from one original, at a 70-a-minute clip, in one to four colors, 6c for the first 100 copies, 1c thereafter. Masters can be used repetitively—excellent for accumulative reports.

Get more facts about this new duplicator and its many uses in the Public Utility field. Write for "Copies—Their Place in Business." No obligation, of course.

MAIL TODAY TO

Ditto *Inc.*

2202 W. Harrison St., Chicago, Ill.

Gentlemen:

Send me copy of your book, "Copies—Their Place in Business." No obligation.

Name.....

Position.....

Company.....

Address.....

City.....*State*.....

Industrial Progress

Selected information about manufacturers, new products, and new methods. Also news on personnel changes, recent and coming events.

North American System to Spend $38,500,000

NEW construction and expansion programs now under way or planned by operating utility companies in the North American Co. group are the largest in nine years and indicate cash expenditures in 1940 almost double the companies spent in 1939 according to Edward L. Shea, president.

With major power plant projects in each of the operating regions in the North American system, the program involves an outlay of almost $61,000,000, of which about $38,500,000 is scheduled for expenditure in 1940. The balance of more than $22,000,000 will be carried over into 1941 for work that cannot be completed this year. New steam electric generating capacity of 265,000 kilowatts will be installed.

North American system's power plant projects alone will require nearly half of the two-year expenditures. The balance will be for enlarging electric transmission and distributing facilities, as well as for additions to the facilities of the companies that supply steam heating, gas and transportation services.

I.B.M. Winner in Campaign for Accident Prevention

INTERNATIONAL Business Machines Corporation's Endicott, N. Y. plant has won the grand award in the fifteenth statewide accident prevention campaign of the Associated Industries of New York State, as well as the leading award for the precision machine group in the same contest, Thomas J. Watson, president of the company, announced recently.

The awards were based on the plant's record of 1,549,218 man-hours of operation without a lost time accident during the three months period of the campaign, terminating January 31st, in which 556 plants in the state competed. The company's Rochester plant also qualified for a 100 per cent certificate for a perfect record of operation in its group during the period.

This is the seventh consecutive year in which the Endicott plant has been among the winners in the Associated Industries campaigns, and the second time it has won the grand award. In 1937, in addition to this award, the plant received a special award for establishing a state record of 4,570,000 man-hours of operation over a period of nine months without a lost-time accident. For its performance in the campaign just closed the plant will receive a special trophy emblematic of the best state record and a bronze plaque designating it as the leader in the precision machine group.

Connecticut Utilities Expect to Spend $16,000,000

PUBLIC utility companies of Connecticut plan expenditures of approximately $16,000,000 during the year 1940 and early in 1941. This would compare with approximately $11,000,000 spent in the year 1939.

Southern New England Telephone Company has budgeted $7,700,000 for gross plant expenditures in 1940, compared with $6,000,000 in 1939. Dial switching equipment and new buildings at Washington, Essex, Clinton and East Haven are included in the program.

United Illuminating Company of New Haven plans the expenditure of $5,000,000 in the next two years, the major part in the current year. This plant improvement for betterment and growth includes installation of a new 25,000 KW generator.

Connecticut Light & Power Company's budget for 1940 is $2,600,000 and includes strengthening power supply facilities and extension of service to new territory. A new service building will be erected at Willimantic. Connecticut Light & Power will extend its rural service and this year's projects include construction of 130 miles of transmission lines. The improvements in generating plants, electric transmission and distribution system will aggregate $1,125,000. A 15,000 KVA synchronous condenser will be installed for improvement of service in the Waterbury area. Routine construction will involve $877,000.

Robertshaw Laboratory Devoted to Temperature Controls

BECAUSE of the increasing importance of its technical research work, the Robertshaw Thermostat Company, has announced the opening of a laboratory at Pittsburgh, Pa., devoted exclusively to research in the field of electric and gas temperature controls.

Here all the research work which was formerly done independently by three divisions—the Robertshaw Thermostat Company, Youngwood, Pa.; the American Thermometer Company, St. Louis; and Grayson Heat Control, Ltd., Lynwood, Calif.—has been centralized and coördinated under the direction of S. G. Eskin.

It is expected that each of the three divisions will greatly benefit from the use of the

combined facilities of the laboratory, which are being further increased through the installation of entirely new testing devices.

The establishment of the Robertshaw Research Laboratory is stated by officers of the Robertshaw Thermostat Company to be one of the initial steps in a comprehensive program of product development, involving continuous investigation of new materials, new applications, and new markets.

The Robertshaw program contemplates progress in many distinct directions, not only as regards technical innovations and improvements but as regards the conditions under which thermostatically controlled equipment is manufactured, sold and resold. It is confidently expected that from the Robertshaw Research Laboratory will come the means of making such equipment more profitable to appliance maker, distributor and ultimate user alike.

Pacific Tel. & Tel. Co. to Spend $10,800,000

PRESIDENT N. R. Powley of Pacific Telephone & Telegraph Company estimates first quarter construction expenditures this year at $10,800,000, an increase of $1,639,000 or 18 per cent over like 1939 period. Projected on present trend, construction needs this year would reach $43,000,000 against $36,355,000 in 1939. It is anticipated that gross additions to plant this year will exceed any year since 1930.

Heating & Ventilating Exposition Successful

MARKING a highpoint in a successful series, the Sixth International Heating and Ventilating Exposition was held during the week of January 22nd to 26th, in Cleveland. More than 300 leading manufacturers presented comprehensive displays of the latest air conditioning equipment and accessories, making this the largest Exposition of its kind ever held. Nearly 25,000 visitors from all parts of the United States and from many foreign countries were in attendance.

The Exposition, otherwise known as the Air Conditioning Exposition, was held under the auspices of the American Society of Heating and Ventilating Engineers, who, following an established custom, held their annual meeting during Exposition week. Meeting also in Cleveland was the National Warm Air Heating and Air Conditioning Association.

Maryland Utility Expansion Will Cost $1,000,000

PLANS for a million-dollar expansion of the power plant of the Eastern Shore Public Service System at Vienna, Md., were announced recently by Lewis Payne, president of the company.

Erection of an addition at the north end of the present plant is planned, and equipment, including a new 7,500-kilowatt steam turbo-generator and supporting high-pressure boiler capacity, is to be installed.

The expansion program has been approved by the State Public Service Commission and the Securities and Exchange Commission in Washington.

The estimated million-dollar expenditure will also provide for additional substation equipment at Vienna to handle the increased power production.

Construction will begin when engineering and architectural details have been finally approved by the company, he said, and completion of the addition is expected by January 1, 1941.

$4,000,000 Program Planned by Conn. Power Co.

THE Connecticut Power Company will spend approximately $4,000,000 for new construction this year and funds for the program will be raised by new financing, according to Samuel Ferguson, president.

The company is planning to install a 25,000 kilowatt generator in its Stamford division, requiring the expenditure of approximately $3,000,000, Mr. Ferguson said. In addition, about $1,000,000 will be spent in transmission and substation work.

Emerson Named Sales Manager of Roebling's Sons Co.

EDWARD D. Emerson, since 1937 district sales manager for Babcock & Wilcox Tube Company, has been appointed general manager of sales for John A. Roebling's Sons Company, Trenton, N. J., manufacturers of wire and wire products. Before his connection with Babcock & Wilcox, Mr. Emerson was sales engineer with Jones & Laughlin Steel Corporation. He will assume his new duties March 1st.

Appliance Package Campaign Announced by Edison Co.

IN addition to a coöperative campaign on mechanical refrigerators, the Consolidated Edison Company of New York recently

THERE'S AN EXIDE FOR EVERY STORAGE BATTERY APPLICATION

IN POWER plants all over the world, the extensive use of Exide - Chloride Batteries in stationary service indicates the high regard in which they are held by consulting and operating engineers everywhere.

Kept floating on the line and consequently well charged at all times, the Exide-Chloride affords dependable protection against interruptions in service occasioned through uncontrollable emergencies.

That explains why these batteries are used in such a wide variety of plants for the operation of circuit breakers, steam valves, boiler and fire alarms, telephones, remote control, time clocks, and for emergency lights, excitation and other services.

Write us for detailed information about this distinctive battery. Learn why its Manchester Positive and Box Negative plates retain their active material much longer than ordinary batteries and give this battery such exceptional life.

Exide
CHLORIDE
BATTERIES

THE ELECTRIC STORAGE BATTERY COMPANY, Philadelphia
The World's Largest Manufacturers of Storage Batteries for Every Purpose
Exide Batteries of Canada, Limited, Toronto

launched a new package-appliance drive, consisting of a vacuum cleaner, a floor lamp and an electric iron.

The new package campaign is a significant departure from Consolidated's previous bargain package, in that the purchase of the lamp and iron is optional.

During March, April and May chief emphasis will be placed on the appliance drive, with advertising scheduled in newspapers, radio, billboards and bill enclosures.

The principal features of the refrigerator drive, called the "Triple Five," are: Five years to pay, $5 down and a $5 allowance for old iceboxes. Coöperating dealers will have the opportunity for additional earnings through participation in various pools which will be set up by each of the distributors. The refrigerator ad campaign will use the same media planned for the package drive.

Logan Aridifiers Available in Wide Range of Sizes

THE Logan Engineering Company, 4912 Lawrence Ave., Chicago, Ill., announce that their line of Aridifiers for removing moisture and oil from air and gas lines is now complete in all sizes from ⅜" to 10".

All sizes effectively remove dirt, scale, oil and moisture from compressed air lines and gas lines, foreign matter impinging on a multiplicity of "propeller blades" revolving in opposite directions and propelled by the flow of air or gas. The arrested contamination and moisture is collected in the lower housing from where it is drawn off as occasion warrants.

All sizes are simply constructed, easy to install in any line, interior or exterior, operate without back pressure and require no maintenance or attention other than a periodical clean-out.

These units are designed for application to the air lines of stationary and portable air compressors to protect drills, jack hammers, and other air operated and actuated machines and equipment used in generating plants and in line construction and maintenance, against sticking, damage and breakdown from foreign matter in the compressed air.

Aridifiers are pictured and described in Bulletin 939, now available, which gives complete operating and installation details on units from ⅜" to 10" standard pipe sizes for gas or air cleaning and drying.

Chevrolet January Sales Best Since 1936

CHEVROLET dealers' sales of new cars and trucks in the month of January totalled 73,328 units, a figure which smashes all January records, with the exception of a single year, according to an announcement by the company.

Sales for the month showed a gain of 21,326 units, or 41 per cent, over those for January 1939.

According to the manufacturer in only one other January—January 1936—has the record of the past month been equalled, and the sales in January of that million-Chevrolet year were only 2,280 units ahead of the month just closed.

Sales of trucks totalled 14,113, a gain of 1,170 units over January 1939.

Paul Cochran Named General Sales Manager of Buckeye

ANNOUNCEMENT was made by W. H. Schomburg, executive vice president of The Buckeye Traction Ditcher Company, Findlay, Ohio, during the Road Show in Chicago, that Paul B. Cochran has been placed in charge of sales.

Mr. Cochran is widely known in the construction equipment industry from his many years of active sales work, especially during recent years as sales manager of the R. B. Equipment Division of Buckeye while that office was in Chicago.

The new appointment places Mr. Cochran in charge of sales of all Buckeye equipment and brings his headquarters to the general office in Findlay, Ohio.

"Drawout" Relay Important Advance in Switchgear

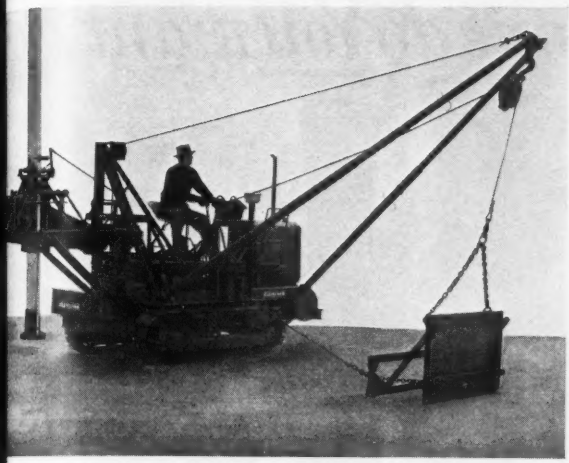
A "DRAWOUT" relay easily removable from the switchgear and combining in one unit the relay and testing devices heretofore mounted separately is announced by General Electric. This new relay consists essentially of three parts: (1) a case which can be mounted and wired permanently; (2) a self-supporting cradle that carries the relay elements and their terminals; and (3) a connecting plug that makes positive silver contact between the relay terminals and the studs in the case.

To draw out the cradle containing the relay elements the cover of the case is removed and the connecting plug withdrawn. This, in order, opens the trip circuit, short-circuits the current transformers, and disconnects the potential transformers. After the plug has been removed the cradle is easily unlatched and drawn out. It can then be replaced by another relay assembly which has been tested in the laboratory, or it can be serviced on the job. Withdrawn from its case, the relay is accessible from all sides, and yet protected by the cradle so that it may be laid on the work-table in any position. A separate testing plug can be inserted in place of the connecting plug to test the relay in place on the panel.

In addition to facilitating testing and servicing, the drawout relay eliminates half of the separate panel connections and one-third of the joints between the relay terminals and the panel terminal board necessary with old type relays.

Built to supplement the removable circuit breakers in metal-clad switchgear, and the drawout low-voltage air circuit breaker, the "Drawout" relay possesses equal advantages.

'S NEW! IT'S DIFFERENT—

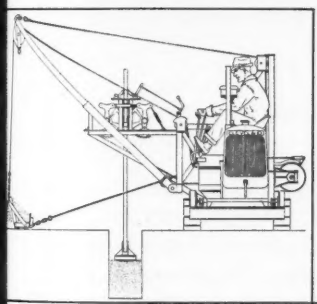


The Only Machine of Its Kind—Performs BETTER and CHEAPER than Ever Before

3

IMPORTANT OPERATIONS INCIDENTAL TO EVERY PIPE-LAYING JOB . . .

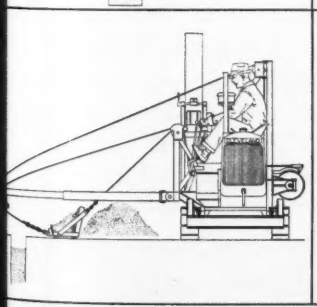
THE CLEVELAND - Model 80

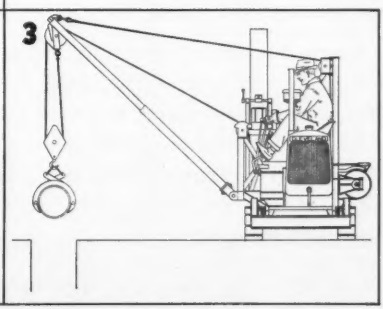


TAMPS—With the Model 80 you can replace as much or more dirt than was taken out. Machine operates astraddle of trench or 3½ feet from edge.

BACKFILLS—With the Model 80 you can work from either side of the trench either pulling in, or pushing in dirt.

LAYS PIPE—Boom and cable winches of Model 80 have been made extra strong permitting handling and laying pipe, pulling sheathing and doing other light crane operations.





Write Today for Complete Details and Specifications

THE CLEVELAND TRENCHER COMPANY

"Pioneer of the Small Trencher"

20100 ST. CLAIR AVENUE CLEVELAND, OHIO

"That hits me where I live!"

THEY TELL ME the boss had to get *eight thousand dollars* to set me up in the plant with the equipment to do my job.

No eight thousand—no job!

A lot of people with savings had to be sold the idea that I could produce a profit on that much money, before they'd come across with it.

The fellow that did the selling was an investment banker, and I'm for him all the way. More power to him!

I wish the politicians would quit shoving the investment bankers around and tying them up with a lot of screwy rules and regulations.

We need more money invested in jobs, not less. And I don't mean the kind the politicians spend tax money for.

I mean jobs making things that people want, and buy. That's where the rosy future is.

If anyone knows a banker or any other business man who's doing the wrong thing—why not name him and bring him to trial?

But let's not stop the whole parade because somebody's out of step. Seems to me it's time to give business the green light.

I'm wise now. I work for a living with eight thousand iron men behind me, so I'm in business myself.

And what helps business helps me!

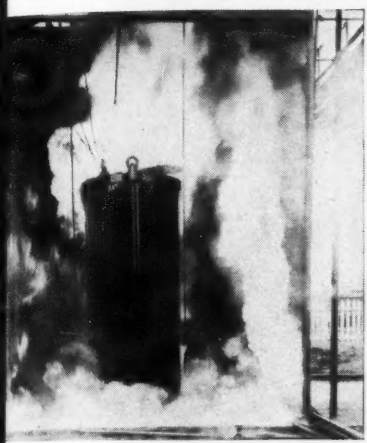
This message is published by

NATION'S BUSINESS

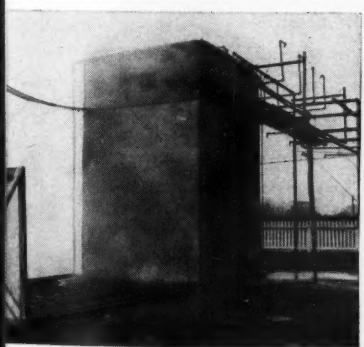
It is the 39th of a series contributed toward a better understanding of the American system of free business enterprise. Regardless of your political affiliations, if you have a point of view you would like to express on developments now shaping in the field of public policy relative to investment banking, why not write to your Congressman or Senator?

—GRINNELL MULSIFYRE—

A Positive Protection Against Oil Fires



A stubborn transformer fire.



Five Seconds after water was turned on, "Mulsifyre" system has completely extinguished the fire.

THE patented principle of Grinnell "Mulsifyre" System is the conversion of an inflammable liquid into one which cannot burn by the simple and effective method of emulsifying it. The necessary mechanical agitation to form the emlusion is provided by discharging water *alone*, with force, onto the surface of the oil by means of a special discharge nozzle, perfected by Grinnell, called a Projector.

Since its introduction, the "Mulsifyre" System has had wide acceptance in this country and abroad as an effective method of extinguishing oil fires. It has been approved for use in the bilges of oil burning ships of the United States Navy.

Write for full details describing "Mulsifyre" and its applications. Grinnell Co., Inc., Executive Offices, Providence, R. I., Branch Offices in Principal Cities.

GRINNELL

AUTOMATIC SPRINKLER FIRE PROTECTION

PROFESSIONAL DIRECTORY

• These pages are reserved for engineers, accountants, rate experts and others equipped to serve utilities in all matters relating to rate questions, appraisals, valuations, special reports, investigations, design and construction.

PROFESSIONAL DIRECTORY (*continued*)

SANDERSON & PORTER
ENGINEERS
VALUATION DEPARTMENT
APPRAISALS AND RATE QUESTIONS
CHICAGO NEW YORK SAN FRANCISCO

Sargent & Lundy, *Incorporated*
ENGINEERS
Steam and Electric Plants
Utilities—Industrials
Studies—Reports—Design—Supervision
Chicago

STONE & WEBSTER ENGINEERING CORPORATION
DESIGN AND CONSTRUCTION
REPORTS • EXAMINATIONS • APPRAISALS
CONSULTING ENGINEERING
BOSTON • NEW YORK • CHICAGO • PITTSBURGH • SAN FRANCISCO • LOS ANGELES

BLACK & VEATCH
CONSULTING ENGINEERS
Appraisals, investigations and reports, design and supervision of construction of Public Utility Properties
4706 BROADWAY KANSAS CITY, MO.

ROBERT E. FOLEY
Erecting Engineer
Telephone Lines—Rural Lines—Fire Alarms—Transmission Lines
48 Griswold St. Binghamton, N. Y.

EARL L. CARTER
Consulting Engineer
REGISTERED IN INDIANA, NEW YORK, OHIO, PENNSYLVANIA, WEST VIRGINIA, KENTUCKY
PUBLIC UTILITY
VALUATIONS AND REPORTS
814 *Electric Building* *Indianapolis, Ind.*

FRANCIS S. HABERLY
ENGINEER
Appraisals—Property Accounting Reports —Cost Trends
122 SOUTH MICHIGAN AVENUE, CHICAGO

CHENEY AND FOSTER
Engineers and Consultants
61 BROADWAY NEW YORK

JACKSON & MORELAND
ENGINEERS
PUBLIC UTILITIES—INDUSTRIALS
RAILROAD ELECTRIFICATION
DESIGN AND SUPERVISION—VALUATIONS
ECONOMIC AND OPERATING REPORTS
BOSTON NEW YORK

(*Continued on following page*)

PROFESSIONAL DIRECTORY *(concluded)*

JENSEN, BOWEN & FARRELL
Engineers
Ann Arbor, Michigan
Appraisals - Investigations - Reports
in connection with
rate inquiries, depreciation, fixed capital reclassification, original cost, security issues.

J. W. WOPAT
Consulting Engineer
Construction Supervision
Appraisals—Financial
Rate Investigations
1510 Lincoln Bank Tower Fort Wayne, Indiana

SLOAN & COOK
CONSULTING ENGINEERS
120 SOUTH LA SALLE STREET
CHICAGO
Appraisals—Original Cost Studies
Depreciation, Financial, and Other Investigations

Representation in this Professional Directory may be obtained at very reasonable rates. Kindly address inquiries to:
ADVERTISING DEPARTMENT
Public Utilities Fortnightly
1038 Munsey Building
Washington, D. C.

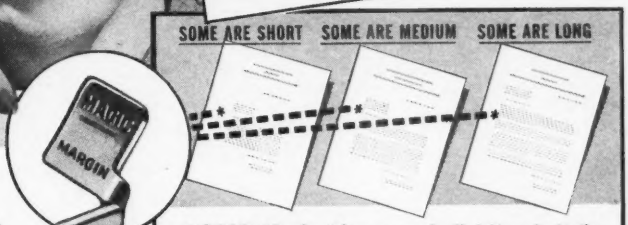
SECRETARY CONFESSES

"I Hated to Change Margins Until . . .

MAGIC* Margin

Made it Automatic . . . Easy . . . Faster! . . ."

*Trade-mark. Reg. U. S. Pat. Off.



MAGIC Margin takes care of all letters instantly

THE MARGIN is your letter's frame of white space. On the Royal, MAGIC Margin provides instant finger-tip control of (a) the proper left and right margin arrangement of the letter, (b) the exact paragraph indention desired.

The most Sensational Improvement in Typewriter History

ONLY ROYAL HAS IT

HAVE YOU EVER watched a typist set a margin on an old-style typewriter? How different from the quick, easy way she does it on the New Royal!

With MAGIC Margin she merely touches a tiny, conveniently placed lever, and *presto* the margin is set! Here is the automatic way for the operator to *make every letter better.*

In your office, give the New Royal THE DESK TEST. Learn all about its amazing improvements . . . MAGIC Margin, Locked Segment Shift Freedom, and many others. Compare the Work!

*Trade-mark. Reg. U. S. Pat. Off.

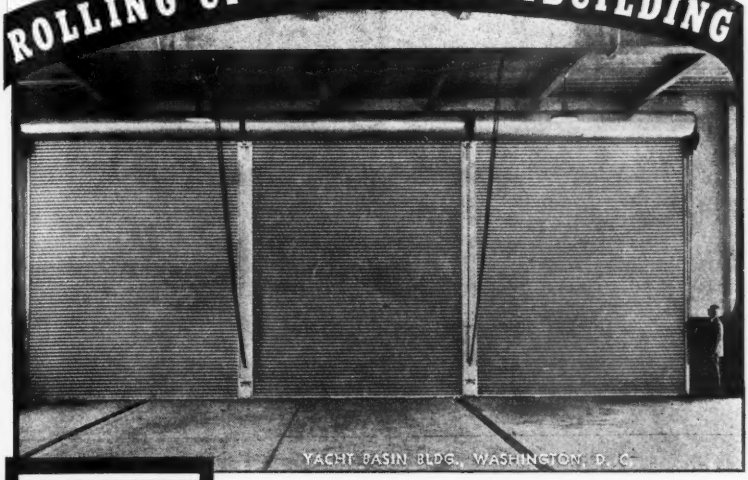
EASY-WRITING ROYAL WORLD'S NO. 1 TYPEWRITER

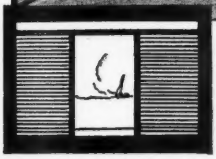
INDEX TO ADVERTISERS

[The Fortnightly lists below the advertisers in this issue for ready reference. Their products and services cover a wide range of utility needs.]

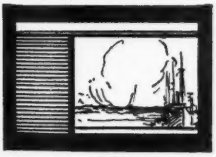
*Fortnightly advertisers not in this issue.

ROLLING UP THE SIDE OF A BUILDING





For small openings, each of the doors can be operated separately.



A two-door-wide opening can be cleared, on either side.

All three doors can be opened at one time — with center posts out of the way.

A TYPICAL KINNEAR SOLUTION TO A LARGE DOOR PROBLEM

Moving **yachts** in and out of a building requires a big doorway — but having to open a large door when only a small one is required, would waste time, money and labor — and heat in winter.

Kinnear solved the problem quickly! Three Kinnear Steel Rolling Doors were installed, with two center mullions that swing easily out of the way when required. The sketches at left show how the door equipment was thus made adaptable to almost any opening requirement.

All **other** advantages of Kinnear Rolling Doors are assured, too. Floor and wall space is saved . . . doors open easily all year around . . . their all-steel construction defies weather and intrusion, repels fire, resists wear . . . and Kinnear design means proved economy and durability.

You can get better results and cut door costs in your plant with Kinnear Rolling Doors. They're built in any size, for any opening, in old or new buildings, and with motor or mechanical control.

LET KINNEAR SOLVE YOUR DOOR PROBLEMS

KINNEAR ROLLING DOORS

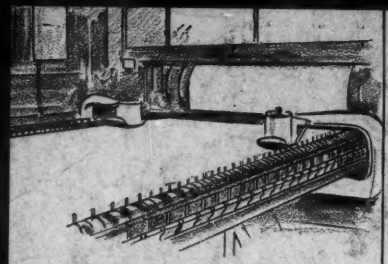
SEND FOR THE NEW 1940 KINNEAR CATALOG

OFFICES AND AGENTS IN ALL PRINCIPAL CITIES

The **KINNEAR** *Manufacturing Company*

2060 - 2080 FIELDS AVE., COLUMBUS, OHIO

FACTORIES: SAN FRANCISCO, CALIF.; COLUMBUS, OHIO

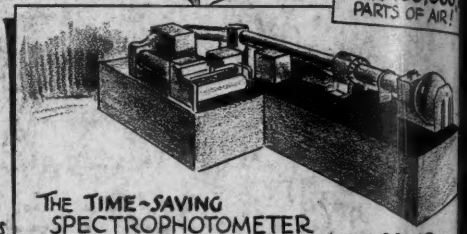


N A NUMBER OF TEXTILE
ILLS, CONTROLS LIKE THIS
ETECT SKEW IN CLOTH, AND
UTOMATICALLY COMPENSATE
OR IT!

The LUXIMETER HAS
TAKEN THE GUESSWORK OUT OF
MEASURING THE DEGREE OF
PASTEURIZATION OF MILK!

THIS MERCURY-
DETECTOR CAN
ONE PART OF
IN 100,000
PARTS OF AIR!

THIS PORTABLE DYNAMIC-BALANCER
MEASURES VIBRATION IN BEARING HOUSINGS
AND MAKES BALANCING POSSIBLE IN ONLY
THREE TRIAL RUNS!



THE TIME-SAVING
SPECTROPHOTOMETER
MAKES GRAPHIC RECORDS OF ANY COLOR
THE HUMAN EYE CAN PERCEIVE!

DOOR OPENERS FOR POWER SALESME

NEW uses for electricity! New ways to capitalize the versatility of electric power. New methods of doing an old job better, *electrically*. These are your power salesmen's stock in trade.

One by one, ingenious new products continue to come from the G-E laboratories and factories. An electric instrument for the super-accurate measurement of color—one that eliminates the human factor. Another electric device to determine the degree of milk pasteurization—and to do it more accurately than ever before. For another industry, a new automatic control that assures the uniform weave of textiles. These, to mention only a few, are marketed through our Special Products Section at Schenectady. Ev one offers a new opportunity for the power sa man to build good will, by bringing it to attention of his customers.

Most of these developments are not highly s nificant as load builders. But as they move o your lines, we feel sure that they demonstr the versatility of electricity and extend the sc of its usefulness. More important, they encour still greater dependence on the service you o

We believe that this is an important phase electrical promotion and that it is of mutual be fit. It's another G-E enterprise that is carr on in your interest as well as ours.

Twenty-eight of these new opportunities are described in our booklet, Little-Known G-E Products for Indu (GES-2136). You can obtain a copy by calling your G-E sales office or by writing to General Electric, Special Products Section, Schenectady, N. Y.

GENERAL ELECTRIC

98-6328